S. HRG. 99-996

CALIFORNIA-NEVADA INTERSTATE COMPACT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2457

A BILL TO GRANT THE CONSENT OF CONGRESS TO THE CALIFORNIA-NEVADA INTERSTATE COMPACT

JULY 15, 1986

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  - Comments of the United States Department of Interior to the October 1965 draft of the California-Nevada Interstate Compact
  - Comments of the Walker River Paiute Tribe on S. 1558 and H.R. 3213, September 9, 1985
  - Letter to Mr. Charles J. Zwick, Director, Bureau of the Budget, from Stewart L. Udall, Secretary of the Interior
  - Letter to James T. McIntyre, Jr., Director, Office of Management and Budget, to Cecil D. Andrus, Secretary, Department of the Interior, May 25, 1979
  - Excerpts from the hearing, To Settle Certain Claims Affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for Other Purposes, Select Committee on Indian Affairs, October 1985
  - Letter to Senator Strom Thurmond, from Phillip D. Brady, Acting Assistant Attorney General, Office of Legislative and Intergovernmental Affairs re S. 1558
  - Transcript of Interior Agencies comments at briefing sessions held March 20-21, 1968, for use of Federal Representative on California-Nevada Interstate Compact Commission--Lake Tahoe and Truckee, Carson, and Walker Rivers
  - Letter to Robert P. Mayo, Director, Bureau of the Budget, from Richard G. Kliendienst, Deputy Attorney General, May 12, 1969
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  - Letter to Charles J. Zwick, Director, Bureau of the Budget, from Stewart L. Udall, Secretary of the Interior
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  - California State Assembly Joint Resolution No. 49—Relative to Pyramid Lake natural resources
  - Supreme Court of the United States October Term, 1982, Nos. 81-2245, 81-2276, and 82-38

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  - *Pyramid Lake Paiute Tribe of Indians, Plaintiff* v. *State of California, et al., Defendants*
  - State of Nevada Department of Conservation and Natural Resources Division of Water Resources
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  - Letter from the Department of the Interior, to James T. McIntyre, Jr., Director, Office of Management and Budget, May 25, 1979
  - California-Nevada Interstate Compact Concerning Waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins, adopted by Joint California-Nevada Interstate Compact Commission, July 25, 1968
  - Letter to Wilfred Shaw, chairman of Pyramid Lake Paiute Tribe, from Ali Shahroody, Civil and Consulting Engineers, Sept. 27, 1985
  - Final Decree, U.S. District Court for the District of Nevada, *The United States of America, plaintiff* v. *Alpine Land & Reservoir Company, a corporation, et al., defendants*
  - Truckee River Agreement, approved as to form by Harold L. Ickes, Secretary of the Interior, United States of America, June 13, 1935
  - Excerpts from the hearing, To Settle Certain Claims Affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for Other Purposes, before the Select Committee on Indian Affairs, October 2, 1985, on S. 1558

CALIFORNIA-NEVADA INTERSTATE COMPACT—S. 2457

TUESDAY, JULY 15, 1986

U.S. Senate,
Subcommittee on the Constitution,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Laxalt, presiding.

Present: Senators DeConcini, Simon, and Grassley.

Staff present: Kelton Abbot, Jean Leavitt, Bill Wood, and Chris Dunn.

OPENING STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator Laxalt. The subcommittee will now be in order. We have a 2-hour time limitation on this hearing, and because of that, as most of you have been advised, the length of the statements unfortunately will have to be somewhat limited, including the chairman's.

We have some congressional statements which should be included. Senator Hecht is out of the country and wanted to be present, but he will have a statement introduced. The statement will be received and filed.

[The following was received for the record:]

Prepared Statement of Hon. Chic Hecht, a U.S. Senator From the State of Nevada

Mr. Chairman, it is a pleasure for me to be here today to testify before the Committee on the California-Nevada Compact. I appreciate your long-term, and long-suffering, interest in this issue, Senator Laxalt. I remember when we both worked on this issue back in Nevada, you as Governor of our State, and I as a member of the legislature.

A lot has happened since the turn of the last decade, when the two State legislatures agreed to the compact. For one thing, the man who at that time was your colleague in California's statehouse, now occupies the White House, former Governor and now President Reagan.

Although things have changed a bit over the last 25 years in California and Nevada, there has been one overpowering constant in natural resource management in the area: the continuing importance of water in the daily lives and economy of the people.

The California-Nevada Compact is a water compact. Its provisions relate to Lake Tahoe and the Truckee, Carson, and Walker Rivers. The compact allocates the waters of these watersheds between California and Nevada, and sets up an administrative mechanism for the two States to take the necessary steps to implement the compacts substantive provisions.

Although the Compact has not been ratified by the Congress, the two States have voluntarily complied with the compact. As a result, congressional ratification should not cause any disruption in the current water management policies of the two states.

The reason the compact needs to be ratified by the Congress at this point is that ratification will solidify the gentleman's agreement that has governed the actions of the two States for the past quarter-century. Ratification will convey an element of certainty that will allow the private sector, and State and local governments, to make the investments necessary for future economic growth and prosperity.

I would like to thank the chairman, my senior colleague Senator Laxalt, for conducting this hearing today, and urge the committee to report this legislation to the Senate as expeditiously as possible. Thank you.

Senator LAXALT. We have Senator Hatch's statement.

[The following was received for the record:]

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The Subcommittee has convened today to review S. 2457, a bill which would grant congressional consent to the California-Nevada Interstate Compact. Under the terms of the Constitution, article 1, section 10, clause 3, "No State shall, without the consent of Congress, enter into any agreement or compact with another State." Accordingly, the Constitution Subcommittee has jurisdiction to review this interstate agreement dealing with the allocation of water resources.

Thirty years ago representatives from California and Nevada began negotiations to arrive at an equitable water allocation arrangement for the Lake Tahoe region. These negotiations culminated in the California-Nevada Interstate Compact in 1968. By 1971 the compact had passed both the California Legislature and the Nevada Legislature. Then Governor Reagan of California and then Governor Laxalt of Nevada signed the compact. All that has been lacking since then is congressional approval.

At this juncture it is Congress responsibility to review the merits of the compact approved by the people of two States. This subcommittee will take that responsibility very seriously. We will review environmental protection issues, Indian water rights issues, commercial and developmental issues, and more. The water supply of whole communities is also at stake.

Throughout these proceedings, I think it is important to remember that the exhaustive lawmaking processes of the two States most affected by this compact have already approved the plan. Congress should clearly satisfy itself that the compacting States have not ignored overriding issues in other States or otherwise harmed national policy beyond this examination. However, Congress ought to recognize the ability of the compacting States to manage their own affairs for the benefit of their citizens. Thus in the absence of overriding national concerns, Congress should generally not delay an agreement that benefits a region.

In light of the complexity of these issues I would like to especially commend my colleague Senator Laxalt, for the steady effort, persistence and even handed manner which he has displayed in this matter, first as Governor and now as the distinguished Senator from the State of Nevada.

Senator LAXALT. We will proceed now with the congressional witnesses. I see that Congressman Reid is present. Congressman, if you would like to come forward and testify, you would be more than welcome.

STATEMENT OF HON. HARRY REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. REID. Thank you very much, Mr. Chairman. Thank you for the opportunity to testify relative to S. 2457, a bill to grant the consent of Congress to the California-Nevada interstate compact, which was introduced by Senator Laxalt and Senator Hecht.

This legislation is the culmination of many years of negotiations between representative commissions of the States of California, Nevada, and subsequent detailed consideration before ratification by the Nevada and the California State Legislatures.

It is imperative to note that the purpose and effect of ratification of the compact is to provide for an equitable allocation of the waters of the Truckee, Carson, and Walker River stream systems and Lake Tahoe between the States of Nevada and California.

Ratification of the compact is tantamount to the successful resolution of problems arising from each State's use of a common and limited water supply. Upon establishment by the compact of each State's share of the stream system and Lake Tahoe, each State shall have jurisdiction to determine, pursuant to its own laws, the right to the use of waters allocated to the respective States.

The compact also provides the assurance that nothing in the document shall abridge, limit or derogate against any claim or right of anyone to the use of water in either State within the allocation to such State that could or may be made or established under State or Federal law, had this compact not been adopted.

Thus, the compact does not preclude or in any way impact or adversely affect any person or entity's prerogatives to secure the right to use water.

There are also specific provisions, Mr. Chairman, that nothing within the compact shall be construed as affecting the obligations of the United States to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes, so long as the basic allocation between the States is not jeopardized.

Although I am certain that you will receive evidence regarding specific allegations on the stream systems and Lake Tahoe, it is worthy of note that Nevada's share of the interstate waters include approximately 90 percent of the Truckee River flow, 80 percent of the Carson River, and 65 percent of the Walker River flow.

Water available for diversion and use in the Lake Tahoe Basin totals 34,000 acre-feet per year, of which 11,000 acre-feet would be allocated to the State of Nevada.

In the absence of the compact, there is no recognized allocation of water for use in the Tahoe Basin on the one hand, and on the other hand there is no maximum amount established as a protection for downstream water rights and water users.

It is important, Mr. Chairman, to note that although the compact allocates to California an amount of water from the conservation yield of the Stampede Reservoir, the Federal courts have ruled that the storage in Stampede Reservoir must be devoted and dedicated to the protection of the endangered species in the Truckee River system unless and until these species are removed from the respective lists.

The compact allocation from Stampede Reservoir could, therefore, not be exercised until the endangered species are fully protected. The 35 percent allocated to California from the Walker Stream system was considered reasonable during the negotiations, and the very minimum that would satisfy the State of California.

Conversely, the 65 percent allocated to Nevada was considered the optimum that could be obtained either through continued negotiations or a potential interstate lawsuit between Nevada and California, which, as we know, would take many decades.

There is a valid right under State appropriation procedures for the unappropriated waters of the Walker Stream system to be devoted to Walker Lake. Mr. Chairman, I think this is very important.

This right has been and will continue to be served out of Nevada's allocation. The Board of Mineral County Commissioners is providing a letter outlining its concern for the protection of this beautiful recreational resource, Walker Lake.

I respectfully request, Mr Chairman, that the letter that they have sent be incorporated into the hearing record when it is received or if it is now in the possession of the staff.

Senator Laxalt. Without objection, it will be so filed.

Mr. Reid. Thank you, Mr. Chairman.

Similarly, the allocations provided for the two States on the Carson River stream system are fair and equitable and are not inconsistent with the exercise of established water rights or decrees.

Those of us from Nevada remain extremely concerned that if a compact is not consummated between the States of Nevada and California, that the States and water users within the respective basins in both States may ultimately be faced with an interstate lawsuit, again, which would take decades.

There are no assurances or guarantees that the results of lawsuits would provide for an equitable and fair allocation between the States as would be realized by ratification of the interstate California-Nevada water compact.

An assurance of a firm, defined, and specifically determined allocation is in the best interest and is, in fact, critical to all water users in the compact areas in both States, including the various Indian tribes, municipalities, agricultural interests, recreational interests, and the public and citizens of the States of Nevada and California.

I appreciate very, very much, Mr. Chairman, your proceeding with this legislation and this hearing today.

Senator Laxalt. We appreciate your coming in. We appreciate your continued interest. I must say it is gratifying to the chairman to hear your statement. We hope to process this in the Senate within the next few weeks, and we would hope that parallel to that we can have appropriate action on the House side. Perhaps we can conclude this very important piece of legislation this session.

I thank the Congressman.

Mr. Reid. Thank you.

[The prepared statement and the text of S. 2475 follow:]

PREPARED STATEMENT OF REPRESENTATIVE HARRY REID

Mr. Chairman and members of the Committee, thank you for the opportunity to testify relative to S. 2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact, introduced by Senators Paul Laxalt and Chic Hecht.

This legislation is the culmination of years of negotiations between representative commissions of the States of California and Nevada and subsequent detailed consideration before ratification by the Nevada and California State Legislatures.

It is imperative to note that the purpose and effect of ratification of the Compact is to provide for an equitable allocation of the waters of the Truckee, Carson and Walker River stream systems and Lake Tahoe between the States of Nevada and California.

Ratification of the compact is tantamount to the successful resolution of problems arising from each state's use of a common and limited water supply.

Upon establishment by the Compact of each state's share of the stream systems and Lake Tahoe, each state shall have jurisdiction to determine pursuant to its own laws the right to the use of waters allocated to the respective state.

The Compact also provides the assurance that nothing in the document shall abridge, limit or derogate against any claim or right of anyone to the use of water in either state within the allocation to such state that could or may be made or established under state or federal law had this Compact not been adopted. Thus the Compact does not preclude or in any way impact or adversely affect any person or entity's prerogatives to secure the right to use water.

There are also specific provisions that nothing within the Compact shall be construed as affecting the obligations of the United States to Indians or Indian Tribes or any right owned or held by or for Indian or Indian Tribes so long as the basic allocation between the states is not jeopardized.

Although I am certain that you will receive evidence regarding specific allocations on the stream systems and Lake Tahoe, it is worthy of note that Nevada's share of the interstate waters includes approximately ninety percent (90%) of the Truckee River flow, eighty percent (80%) of the Carson River and sixty-five percent (65%) of the Walker River flow. Water available for diversion and use in the Lake Tahoe basins totals thirty-four thousand (34,000) acre feet per year, of which eleven thousand (11,000) acre feet would be allocated to the State of Nevada.

In the absence of the Compact, there is no recognized allocation of water for use in the Tahoe basin on one hand, and on the other hand there is no maximum amount established as a protection for downstream water rights and water users.

It is important to note that although the Compact allocates to California an amount of water from the conservation yield of Stampede Reservoir, the Federal Courts have ruled that the storage in Stampede Reservoir must be devoted and dedicated to protection of the endangered species in the Truckee River stream system unless and until those species are removed from the respective lists.

The Compact allocation from Stampede Reservoir could, therefore, not be exercised until the endangered species are fully protected.

The thirty-five percent (35%) allocated to California from the Walker River stream system was considered reasonable during the negotiations and the very minimum that would satisfy the State of California. Conversely the sixty-five percent (65%) allocated to Nevada was considered the optimum that could be obtained either through continued negotiations or a potential interstate lawsuit between Nevada and California.

There is a valid right under state appropriation procedures for the unappropriated waters of the Walker River stream system to be devoted to Walker Lake. This right has been and will continue to be served out of Nevada's allocation. The Board of Mineral County Commissioners is providing a letter outlining its concern for the protection of this beautiful recreational resource. I respectfully request that the letter be incorporated into the hearing record once it is received.

Similarly, the allocations provided for the two states on the Carson River stream system are fair and equitable and are not inconsistent with the exercise of established water rights or decrees.

Those of us from Nevada remain extremely concerned that if a Compact is not consummated between the States of Nevada and California that the states and water users within the respective basins in both states may ultimately be faced with an interstate lawsuit. There are no assurances or guarantees that the results of lawsuits would provide for an equitable and fair allocation between the states as would be realized by ratification of the Interstate Water Compact.

An assurance of a firm, defined and specifically determined allocation is in the best interest and is, in fact, critical to all water users in the Compact areas in both states including the various Indian Tribes, the municipalities, agricultural interests, recreation interests and the public and citizens of the States of Nevada and California.

Thank you.

99TH CONGRESS
2D SESSION

S. 2457

To grant the consent of Congress to the California-Nevada Interstate Compact.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, MAY 12), 1986

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To grant the consent of Congress to the California-Nevada Interstate Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONGRESSIONAL CONSENT

SECTION 1. The consent and approval of Congress is given to the Congressional Consent California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

"CALIFORNIA-NEVADA INTERSTATE COMPACT

"ARTICLE I. PURPOSES

"Consistent with the provisions of the authorization acts of the State of California and the State of Nevada and the

United States, the major purposes of this compact are to provide for the equitable apportionment of water between the two States; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

"ARTICLE II. DEFINITIONS

"A. The terms 'California' and 'Nevada' shall mean respectively the State of California and the State of Nevada.

"B. The term 'commission' shall mean the administrative agency created by Article IV of this compact.

"C. The term 'Lake Tahoe Basin' shall mean the drainage area naturally tributary to Lake Tahoe including said lake or to the Truckee River upstream from the Truckee River intersection with the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian.

"D. The term 'Truckee River Basin' shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake including such lake, but excluding the Lake Tahoe Basin.

"E. The term 'Carson River Basin' shall mean the area which naturally drains into the Carson River and its tributaries and to the Carson River Sink, but excluding the Humboldt River drainage area.

"F. The term 'Walker River Basin' shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line.

"G. Except as otherwise expressly provided in this compact the term 'existing', 'present', and 'presently' shall mean as of 1964.

"H. The term 'effective date of the compact' shall be the date on which the legislation provided for in Article XXII (1) and (2) shall become law.

"I. 'Measured' means the determination of the relevant amount of water in cubic feet per second or gallons per minute or acre-feet by the use of a current meter, rated weir, rated flume, pipeline water meter, computation from contour maps, or any other method which results in a reasonably accurate determination based on sound engineering practices.

"ARTICLE III. SOVEREIGN RELATIONSHIP

"A. Each state shall have jurisdiction to determine pursuant to its own laws, the rights to the use of waters allocated to it herein; provided, however, that the right to use such water shall be limited to such quantities of water as shall reasonably be required for the beneficial use to be served and shall not extend to the waste or unreasonable use of water. Such provision shall not be construed to affect the water rights laws of either state with respect to any waters, other than the waters allocated to the state hereunder. Each state will recognize and accept applications for such permits, licenses or other permissions as are required by the law of the state where the application is filed to enable the other state to utilize water allocated to such other state. This provision shall neither require nor prohibit the United States of America from complying with provisions of state law relating to the appropriation of water allocated to the states by this compact.

"B. Each state shall cooperate with the other in securing to each the right to fully utilize the rights and privileges granted and waters allocated to each hereunder.

"C. The use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made.

"ARTICLE IV. THE CALIFORNIA-NEVADA COMPACT COMMISSION

"A. Creation and Composition

"1. There is hereby created an interstate compact commission to be designated as the California-Nevada Compact Commission herein referred to as the commission.

"2. The commission shall consist of five members from each state and one member as representative of the United States chosen by the President of the United States who is hereby requested to appoint such a representative. The United States member shall be ex officio chairman of the commission without vote and shall not be a domiciliary of or reside in either state.

"(a) The California members of the commission shall consist of the Director of the Department of Water Resources of the State of California, and four (4) members appointed by the Governor of California, all of whom shall be residents of the State of California. One of the four members so appointed shall be a resident of the Lake Tahoe Basin, one shall be a resident of the Truckee River Basin, one shall be a resident of the Walker River Basin and one shall be a resident of the Carson River Basin.

"(b) The Nevada members of the commission shall consist of the State Engineer of the State of Nevada (who additionally shall represent all Nevada areas not otherwise represented as herein provided), and four (4) members appointed by the Governor of Nevada, each of whom shall be a resident of the State of Nevada and represent a specific area therein as below defined, provided that the Governor shall not appoint any person a member of such commission if he determines that such person has a conflicting interest in California. One of the four members so appointed shall be a resident real property owner within and represent the Reno-Sparks metropolitan area (including adjacent agricultural area) and be fully qualified by knowledge and experience in connection with the water requirements and supply for such area; the other three members so appointed shall be representative of the common interest and goals of all water users of the area and each shall have broad practical experience in water management, and one shall be a resident real property owner within and represent the Walker River Basin in Nevada, another shall be a resident real property owner within and represent the Carson River Basin in Nevada upstream from Lahontan Reservoir, and the third shall be a resident real property owner within and represent the area within the Truckee-Carson Irrigation District in Nevada.

"3. The term of office of the four members of the commission appointed by each Governor shall be four (4) years. The Governor of each state, upon appointment of the first members of the commission, shall designate one member of the commission to serve for a period of one year, one member to serve for a period of two years, one member to serve for a period of three years, and one member to serve for a period of four years. Thereafter, members shall be appointed for the regular term of four years as the terms expire.

"4. Interim vacancy, for whatever cause, in the office of any member of the commission shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

"5. The appointed members of the California-Nevada Compact Commission shall be designated within ninety (90) days after the effective date of the compact. Within thirty (30) days after such members have been appointed and the federal representative designated, the commission shall meet and organize.

"B. Finances

"1. The salaries and the personal expenses of each member of the commission shall be paid by the government he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States or by other funds received by the commission shall be borne equally by the two states.

"2. The commission shall adopt a budget covering the commission's estimate of its expenses for each of the following two fiscal years; provided, that whenever the Legislatures of both states appropriate funds on an annual basis the commission shall submit its budget on such annual basis. The commission shall submit said budget to the Governors of the two states for joint review and approval and to the President of the United States at the earliest date prescribed by the two states for submission of proposed budgets. Each state shall appropriate one-half of the funds necessary to meet said budget requirements, which appropriations shall be made available to the commission as of July 1 of each fiscal year for such fiscal year's operations. All unexpended and unencumbered funds from such appropriations shall be returned by the commission in equal proportions to the states to the credit of the state fund from which said appropriations was made. All receipts and disbursements of funds handled by the commission shall be subject to a joint audit by the states and the report of said audit shall be included, and become a part of the annual report of the commission.

"3. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the Constitution of said government. The commission shall not incur any obligations prior to the availability of funds adequate to meet the same.

"4. The commission shall make and transmit to the Legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

"C. Meetings and Voting

"1. A quorum for any meeting of the commission shall consist of six members of the commission, provided that at least three members are present from each state.

"2. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, or involving litigation in which the commission is a party, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive session under such rules and regulations as the commission may see fit to establish.

"3. Each state shall have but one vote and every decision, authorization, determination, order or other action shall require the concurring votes of both states, provided that no state shall vote on any action without the concurring vote of not less than three members of the commission from such state.

"D. General Powers

"The commission shall have power to:

"1. Adopt, amend and revoke bylaws, rules and regulations and prescribe procedures for administration of the provisions of this compact.

"2. Establish such offices as it deems necessary, and acquire and hold property either by purchase, lease or otherwise as may be necessary for the performance of its functions under this compact.

"3. Employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the commission and shall not be considered to be employees of either state. The commission may establish workmen's compensation benefits directly or by insurance. The commission is authorized to contribute to the cost of health and accident insurance for its employees to the same extent as either state contributes to the cost of such insurance for its employees.

"4. Perform all functions required of it by this compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state, federal or local agency or other entity or person.

"5. Make such findings as are pertinent to this compact including but not limited to findings as to the quantities of water being used in either state, the amount of water available for use pursuant to the allocations made herein, and each state's share of the waters allocated.

"6. Install and maintain measuring devices of a type or types approved by the commission in any stream, lake, reservoir, ditch, pumping station or other diversion works on the Truckee, Carson or Walker Rivers or on Lake Tahoe, or on waters tributary thereto, or to require water users at their expense to install and maintain measuring devices, as the commission may determine necessary or proper to carry out the purposes or provisions of this compact. The execution and enforcement of such requirements concerning such measuring devices as shall be enacted by the commission shall be accomplished by the commission directly, or by such federal, state, local or other official or person as the commission may delegate, or by any other agency responsible to or representing a federal court.

"7. Accept gifts of money or real property or anything of value.

"8. Appoint a hearing examiner or examiners who may be members of the commission to conduct hearings and to make recommendations to the commission on any matter requiring a hearing and decision by the commission.

"9. Obtain a right of access to all properties in the Lake Tahoe, Truckee River, Carson River and Walker River Basins whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce this right of access.

"10. Take such action as it deems appropriate for the enforcement of the provisions of this compact.

"11. Administer oaths or affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena which may be served anywhere within the territorial limits of the United States; said power to administer oaths and affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena may also be exercised by any hearing examiner appointed as provided in subsection 8 of this Section D.

"12. Contact with the appropriate agency of either state, including the retirement system, to provide retirement and other benefits to commission employees.

"E. Whenever the public health or welfare is endangered, the commission may declare the existence of an emergency and, in such event, shall designate the location, nature, cause, area, extent and duration thereof. In the event of an emergency so declared, the commission may, with respect to all matters covered by this compact, do all things necessary, proper or convenient independently or in cooperation with any other agency, person, or entity, to initiate, carry on, and complete any and all remedial measures required to meet said emergency including the adoption and enforcement of any regulations and restrictions necessary for such purpose.

"ARTICLE V. LAKE TAHOE BASIN

"A. The right of the United States or its agent to store waters in Lake Tahoe between elevations 6,223.0 and 6,229.1 feet (Lake Tahoe datum) and to release said stored waters for beneficial uses downstream from Lake Tahoe Basin is hereby ratified and confirmed subject to the rights granted in Section D of this article.

"B. It is agreed by the states subject to the consent of the head of the federal agency having jurisdiction thereof, that an overflow weir of approximately 140 feet in length with a crest elevation of 6,223.0 feet, Lake Tahoe datum, upstream from the Lake Tahoe outlet gates shall be constructed and installed with necessary channel improvements within four years from the effective date of this compact provided that should the commission decide that it is in the best interest of each of the two states, it may extend such period for such additional period or periods as it may deem reasonable. The cost of this installation shall be borne by the States of California and Nevada in equal amounts. As used herein, Lake Tahoe datum shall be measured with respect to the top surface of the hexagonal brass bolt seven-eighths inch in diameter, projecting one inch from the vertical face of the southerly concrete abutment wall of the present existing

Lake Tahoe Dam, at approximately 3.2 feet below the top of the wall and approximately in line with the upstream ends of the cutwaters of the concrete piers between the sluiceways of the dam. This surface of the brass bolt is presumed for the purposes of the compact to have an elevation 6,230.0 feet Lake Tahoe datum, notwithstanding that it was determined by the U.S. Geological Survey on November 15, 1960, to be at an elevation of 6,228.86 feet above sea level datum of 1929.

"C. The storage rights in Lake Tahoe shall be operated alone or in conjunction with other reservoirs so as to minimize the period and duration of high and low water elevations in Lake Tahoe, provided that exchanges of water or releases between Lake Tahoe and other reservoirs shall not measurably impair the intended purpose of such reservoirs.

"D. Upon construction of the overflow weir provided for in Section B of this article, the total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in said basin shall not exceed 34,000 acre-feet annually, of which 23,000 acre-feet annually is allocated to the State of California for use within said basin, and 11,000 acre-feet annually is allocated to the State of Nevada for use within said basin. After use of the water allocated herein, neither export of the water from the Lake Tahoe Basin nor the reuse thereof prior to its return to the lake is prohibited. This allocation is conditioned upon the construction of the overflow weir; however, it is recognized that there may well be a period of time between the effective date of the compact and the construction of the overflow weir; during that period of time both states shall be permitted to use waters within the Lake Tahoe Basin subject to the same conditions, both as to place of use and amounts of use, as are provided in this Article V.

"E. In addition to the other allocations made by this compact, transbasin diversions from the Lake Tahoe Basin in both states existing as of December 31, 1959, may be continued, to the extent that such diversions are recognized as vested rights under the laws of the state where each such diversion is made.

"The diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada is hereby recognized as an existing transbasin diversion within the meaning of this Section E.

"F. Pumping from Lake Tahoe Basin for the benefit of downstream users within the Truckee River Basin shall be permitted only in the event of a drouth emergency as declared by the commission to the extent required for domestic, municipal, and sanitary purposes, and when it is determined by the commission that all other water available for such uses from all sources is being so utilized. In the event of such declaration of emergency, use of this water for such purposes shall have priority over use of water for any other purpose downstream from Lake Tahoe Basin. Pumping shall be done under the control and supervision of the commission and water pumped shall not be charged to the allocation of water to the Lake Tahoe Basin made herein.

"ARTICLE VI. TRUCKEE RIVER BASIN—

"The following allocations of water of the Truckee River and its tributaries, including Lake Tahoe releases, are hereby made in the following order of relative priority as between the states:

"A. There is allocated to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree (Final Decree in United States vs. Orr Ditch Company, et al., United States District Court for the District of Nevada, Equity No. A3). By appropriate court order, the United States, for and in behalf of the Pyramid Lake Indians shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so allocated so far as such change may be made without injury to the allocations to either state.

"B. There is allocated to California:

"1. The right to divert within the Truckee River Basin in California 10,000 acre-feet of water per calendar year which may be stored in reservoirs at times when the flow in the channel of the Truckee River at the United States Geological Survey Gauging Station at or near the California-Nevada state line exceeds 500 cubic feet per second; provided that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of such storage in any one reservoir, except Donner Lake, shall not exceed 500 acre-feet of active storage capacity.

"2. The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

"3. Six thousand acre-feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet, subject to the execution of a contract or contracts therefor with the United States of America. California may divert all or any portion of said 6,000 acre-feet of conservation yield from Stampede Reservoir directly or by exchanges from any source on the Truckee River or its tributaries or from Lake Tahoe. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"4. If and when the water allocated to California in subparagraphs 1 and 3 of this section and in Article V is being used, or such use appears imminent, the commission shall permit California to develop additional yields of water for use in California, either directly or by exchange subject to the following limitations:

"(a) All existing beneficial uses of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law as of that time together with the yield of Stampede Reservoir in excess of 6,000 acre-feet shall be recognized and not impaired by the development of such additional yield.

"(b) Additional yields developed for use in California shall be limited to an amount not to exceed an aggregate of 10,000 acre-feet annually, and such development shall be for domestic, municipal, and industrial uses solely. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"(c) The right of the commission to permit Nevada to share in such additional yield upon participation by Nevada in bearing a proportionate cost of developing such additional yield.

"C. The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually with the priority as set forth in California State Water Rights permit 11666 and to release water therefrom as set forth in said permit and any license which may be issued thereunder is hereby recognized and confirmed.

"D. There is allocated to Nevada all water in excess of the allocations made in Sections B and C of this article.

"ARTICLE VII. CARSON RIVER BASIN

"The following allocations of water of the Carson River and tributaries are hereby made in the following order of priority as between states:

"A. There is allocated to the State of California:

"1. The right to divert from the natural flow of the West Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 168 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 185 c.f.s. measured at the points of diversion.

"Provided, however, diversions for use downstream from the western boundary of Section 34, Township 11 North, Range 19 East, Mount Diablo Base and Meridian, shall be subject to the following limitations:

"(a) Whenever, after the first Monday in May or any day in that week or alternate weeks thereafter of any year the flow of the West Fork of the Carson River at said western boundary shall have fallen below 175 cubic feet per second, then, until October 31 next, water users in California who divert from the West Fork of the Carson River downstream from said western boundary shall rotate all or any portion of the natural flow of the West Fork of the Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every other week beginning with the week following that in which water is used in Nevada, and during each rotation period said California users shall be entitled to divert the natural flow of the West Fork of the Carson River during their rotation weeks.

"(b) Rotation between water users in California and Nevada on the West Fork of the Carson River may be terminated in whole or in part upon approval of the commission for such termination, upon provision being made so that sufficient water is available by storage or exchange to assure that the water users in Nevada will receive at the same time the flow of water which would have been available to the Nevada water users under rotation.

"(c) Stock water, domestic water, and water for fire protection purposes may be diverted downstream from said western boundary from the natural flow of the West Fork of the Carson River at all times by owners of irrigation water rights in California whose lands are contiguous to the West Fork of the Carson River; provided, however, that such diversion shall be limited to the amounts actually required to deliver water for such purposes, and any excess over the amount so diverted shall be returned to the West Fork of the Carson River whenever practicable. Water diverted under this provision shall not be converted to any other use. The commission or its designee shall rule on any challenge relative to the necessity and amount of water required for such purposes.

"2. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 3,280 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 115 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 115 c.f.s. measured at the points of diversion.

"3. There is allocated to the State of California the right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands within said county adverse to Lahontan Reservoir but subject to all other existing uses in Nevada. Water stored pursuant to this section remaining at the end of the year shall be deemed to have been stored in the succeeding year.

"B. There is allocated to the State of Nevada;

"1. The right to divert water from the natural flow of the Carson River and its tributaries during the period commencing March 15 and ending October 31 of each year at the rate of 3 c.f.s. per 100 acres for use on presently irrigated lands in the area above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 c.f.s. per 100 acres is based on a 30-day average for the area as a whole and shall not prevent greater rates of diversion for those areas that have an established greater use; provided that the aggregate diversion measured at the points of diversion shall not exceed 700 c.f.s. on the East Fork of the Carson River, 300 c.f.s. on the West Fork of the Carson River, and 220 c.f.s. on the Main Carson River below the confluence of the East and West Forks.

"The combining and exchanging of the use of water between ditches and among users shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head.

"2. Subject to allocations made in subsection B.1 and Section C of this article, the right to divert water from the Carson River for irrigation use either by direct diversion or by storage in Lahontan Reservoir or other existing reservoirs for use on the Newlands Project.

"C. There is allocated to each state the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacity with the appropriate priority with respect to natural flow rights upstream from Lahontan Reservoir under applicable state law, and use such stored waters on the lands in each state to which the storage is appurtenant.

"D. Additional yields shall be available for development under the currently authorized Washoe Project from water available in excess of existing beneficial uses recognized by Nevada law, or under other new projects upon a determination by the commission that there is water available on the Carson River and its tributaries in excess of that required to satisfy existing beneficial uses in Nevada as determined by

Nevada law as of the time of authorization of construction of such new projects. Such additional yields shall be allocated between the states with equal priority, 20 percent of which shall be allocated to California and 80 percent to Nevada.

"Each state shall have the right to participate in any development project by bearing a proportionate cost of such development. In the event that joint developments are found to be not feasible or desirable, each state may develop separately its proportionate share of the remaining water.

"E. Except as provided by Article X of this compact, the waters of the Carson River shall not be used in areas outside the Carson River Basin.

"Article VIII. Walker River Basin

"A. Allocations to Present Rights and Uses

"1. Except as the rights of the Walker River Irrigation District may be limited by subsections 2 and 3 below, the provisions of the decree in the case of United States v. Walker River Irrigation District, et al., United States District Court for the District of Nevada Equity No. C–125, filed April 15, 1936, as amended by the Order of the Honorable A. F. St. Sure, dated April 24, 1940, hereafter called Decree C–125 are hereby recognized and confirmed.

"2. The rights of the Walker River Irrigation District to store water of the West Walker River in Topaz Reservoir with a storage capacity of 59,000 acre-feet, under Part VIII of Decree C–125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted annually to storage is 85,000 acre-feet. No more than 85,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district annually. The 85,000 acre-feet amount so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in Decree C–125 acquired by said district prior to 1964. For the purpose of this provision 'annually' means the period from November 1 through October 31 of the following year.

"(b) The maximum rate of diversion to such reservoir under such rights is 1,000 c.f.s.

"(c) For the purpose of determining the availability of water to satisfy rights junior to the Topaz Reservoir storage rights of the Walker River Irrigation District, or for division between the states as unused water, water which has been stored, or is available for storage in and can be physically diverted to such reservoir under such reservoir rights but is released or is allowed to pass through the reservoir and is not rediverted to use in Nevada, shall be deemed to have been held in storage; provided, that until a new major storage project is constructed on the West Walker River, the foregoing shall not apply to the extent that said district with the concurrence of the watermaster determines, prior to the release or passing through of such water from Topaz Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Topaz Reservoir as a means of protecting lands in Nevada against flood damage later in the year.

"3. The right of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir with a storage capacity of 42,000 acre-feet, under Part VIII of Decree C–125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted to storage in any year is 57,000 acre-feet. No more than 57,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district in any year. The 57,000 acre-feet amounts so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in said decree acquired by said district prior to 1964 except for water used under such rights prior to 1964 on lands owned by said district in Bridgeport Valley. For the purpose of this provision 'year' means the period from November 1 of one calendar year to October 31 of the following calendar year.

"(b) Water of the East Walker River and its tributaries may, adversely to the Bridgeport Reservoir storage rights hereinabove recognized and confirmed, be stored upstream from said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights; provided, that when the Walker River system is put on priority under Decree C–125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"4. (a) There is allocated to each state respectively the amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C–125, provided, that this allocation shall not include water distributed under the historical administration of Decree C–125 in excess of the rights set forth in Decree C–125 to lands having rights thereunder. In making this allocation, it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty. The commission shall as soon as practicable after its effectuation provide for an investigation, either with its own staff or by other agencies or persons, to ascertain with certainty the amounts of water and priorities of such uses. As between the respective states, the priorities shall be determined as follows: In cases of use not under state-recognized rights, the priorities shall be the date of initiation of use; in cases of use under state-recognized rights, the priorities shall be as provided under the law of the state where the diversion is made. Upon approval by the commission, the results of the investigation shall be binding as to the allocation to each state hereunder.

"(b) In addition to rights recognized in subsection A.1 of this article there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second. For the purpose of determining the availability of water to satisfy rights junior to this allocation or for division between the states as unused water, water which has been stored, or which can be physically stored or diverted to use under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used: *Provided,* That the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year: *Provided further,* That the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water of suitable quality for irrigation on said reservation as determined by the commission.

"Water of the Walker River and its tributaries may, adversely to the Weber Reservoir storage rights hereinabove recognized and confirmed, be stored upstream for said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights: *Provided,* That when the Walker River system is put on priority under Decree C–125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"5. In addition to rights recognized in subsections A.1 and A.4(a) above, there is allocated to California water of the West Walker River as follows:

"(a) When all direct diversion rights under Decree C–125 are being satisfied and simultaneously water of the West Walker River is being diverted to storage pursuant to the Topaz Reservoir storage rights recognized and confirmed in subsection 2 of this Section A, but there is not flow in excess of that required to fully satisfy Topaz Reservoir storage rights, diversions in Antelope Valley in excess of the amounts to which Antelope Valley lands are entitled under Decree C–125 shall be permitted by the watermaster for such periods and in such amounts as, in the sound professional judgment of the watermaster, will not cause, on an overall irrigation season basis, any discernible net reduction in the amount of water available to satisfy Topaz Reservoir storage rights.

"(b) Such excess diversions may be used only on Antelope Valley lands entitled to water under Decree C–125 which can be served from the ditch systems existing as of the effective date of this compact.

"(c) The allocation in this subsection 5 shall terminate after construction of a new major storage project on the West Walker River upstream from Antelope Valley.

"B. Allocation of Unused Water

"1. The term 'unused water' includes all waters of the Walker River and its tributaries in excess of the amounts allocated, or required for satisfaction of rights and uses recognized and confirmed, as provided under Section A of this Article VIII, except that there shall be excluded therefrom natural flow which is not physically available above the head of Mason Valley. There is allocated to the State of California 35 percent of such unused water, and there is allocated to the State of Nevada 65 percent of such unused water. The allocation to each state provided herein in this subsection B.1 shall be equal in priority.

"(a) The reregulation by storage of waters allocated for storage shall not be considered as the development of 'unused water'.

"2. Neither state shall be precluded from constructing works for the control, use and development of the water allocated pursuant to subsection B.1 of this article for optimum use of water.

"3. While separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated, the State Engineer of the State of

Nevada and the Department of Water Resources of the State of California shall cooperate in a joint review of all potential developments of unused water of the West Walker River so allocated in subsection B.1 of this Article VIII and shall prepare and present a report of the benefits to be obtained, and other relevant data from each such development to the commission or if the commission has not yet become operative, to the joint commission which negotiated this compact, at a public hearing or hearings held at times and places within the Walker River Basin set by the commission or said joint commission.

"(a) Should a separate surface storage project or projects be constructed in Nevada to develop Nevada's share of the unused water of the West Walker River, California may thereafter store and use said unused water allocated to Nevada adverse to such Nevada storage projects: *Provided*, That, without charge to Nevada, California makes available for consumptive use in Nevada, water in the same amounts, at the same times, and in the same places as would have been available for use in Nevada from such Nevada storage projects had California not so stored and used said unused water allocated to Nevada: *And provided further*, That Nevada shall not be deprived of water required for: (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the commission to be in the public interest of the Walker River Basin as a whole.

"(b) From time to time after construction of each surface storage project upstream from Topaz Reservoir, for development of the unused water allocated herein, the commission shall determine the amounts of water which may be diverted and used in each state pursuant to its allocation as the result of the construction and operation of such project. In making such determination the commission shall compute any increase of yield of previously constructed reservoirs which may result from operation of such project constructed to develop unused water and shall include such increase in the amounts of water which may be diverted and used in each of the two states pursuant to its allocation of unused water.

"4. Return flow to the Walker River or its tributaries from any source shall be deemed to be natural flow.

"5. Unused water shall be used only:

"(a) Within the Walker River Basin;

"(b) Within the portion of Artesia Lake Basin south of the northern township line of Tier 12 North and west of a line one mile east of the eastern range line of Range 23 East, Mount Diablo Base Line and Meridian;

"(c) Within the portion of Mason Valley and Adrian Valley south of the northern township line of Tier 15 North, Mount Diablo Base Line;

"(d) Within the area tributary of Topaz Lake; or

"(e) Any combination of the above areas.

"C. Watermaster.

"1. A single watermaster shall have the responsibility and power to administer: (a) all rights and uses of water of the Walker River Basin recognized in Section A of this Article VIII, including rights under Decree C–125, (b) the allocation between the states provided for in this compact of water of the Walker River Basin in excess of that necessary to satisfy such rights and uses, and (c) all rights acquired to use water so allocated.

"2. The watermaster shall be nominated by the commission as soon as practicable after this compact goes into effect, but his appointment shall not become effective until approved and confirmed by the Federal District Court for the District of Nevada, it being the intent of this compact that only a person satisfactory to both the commission and said court be the watermaster under this compact and under Decree C–125. At any time either the commission or said court may terminate the appointment of the person serving as watermaster by adopting an appropriate resolution or order, and notifying the other and the watermaster thereof. When a vacancy occurs by such action or by the death or resignation of the person serving as watermaster, a successor shall be selected by the same procedures for the original appointment.

"3. Until appointment of the watermaster becomes effective by approval and confirmation of said court either as to the original selection of the watermaster or subsequent selections to fill a vacancy, a person designated by the commission shall have interim responsibility and power to administer the allocation between the states referred to in subsection (1)(b) above and all rights and uses other than the rights under Decree C–125, and the rights and uses under Decree C–125 shall be administered on an interim basis as may be provided by said court.

"4. Actions and decisions of the watermaster as to the administration of the rights under Decree C–125 shall be subject to review and modification by said court. Actions and decisions of the watermaster as to the administration of the allocation between the states referred to in subsection 1(b) above and of all rights and uses other than rights under Decree C–125 shall be subject to review and modification by the commission.

"5. Said court is requested to appoint a six-member advisory board composed of one person each representing: (1) the East Walker River Basin in California, (2) the West Walker River Basin in California, (3) the East Walker River Basin in Nevada, (4) the West Walker River Basin in Nevada, (5) the Main Walker River Basin in Nevada, and (6) the Walker River Indian Reservation. The watermaster shall prepare an annual budget of proposed expenditures for personnel, equipment, supplies, and other purposes deemed by him to be necessary to carry out his functions. In the formulation of said budget the watermaster shall consult with said advisory board. In the event that said advisory board is not in agreement with the budget proposed by the watermaster, it shall so advise said court. Said budget shall require approval of both the commission and said court to become effective.

"6. The expenditures attributable to administration of the rights under Decree C–125 shall be apportioned and collected in accordance with orders of said court. The expenditures attributable to administration of all other rights and uses of the water of the Walker River Basin under this compact shall be equitably apportioned among, and collected from, the users thereof by the watermaster under rules and regulations of the commission, and the commission shall have the power to enforce collection thereof by any reasonable means, including court action in any state or federal court of appropriate jurisdiction. The expenditures attributable to administering the allocation between the states referred to in subsection 1(b) above shall be borne by the commission as part of the expense under Article IV, subsection B.1 of this compact.

"ARTICLE IX. GROUND WATER AND SPRINGS

"A. Development and Use of Ground Water

"1. Both states shall have the right to develop and use ground water within their respective boundaries; provided that development and use of ground water in one state shall not reduce the amount of water which the other state would have received under the allocation herein if ground water were not developed and used.

"2. In the development and use of ground water pursuant to this article, wells or other methods of collecting underground water shall be constructed in a manner which will assure that water will not be drawn directly from allocated surface water. In the absence of proof to the contrary made to the commission, wells drilled within 500 feet from any perennial streams which are not sealed from the surface to a depth of at least 50 feet shall be deemed prima facie to draw directly from allocated surface water.

"B. Each state shall have the right to use water from springs; provided that the use of water from springs in one state shall not reduce the amount of water which the other state would have received under the allocations herein if water from springs were not used.

"C. Effect on Allocations

"1. The commission shall have authority to take such action as it deems appropriate, so that the allocations of water made by this compact to either state shall not be adversely affected by ground water withdrawals or use of water from springs in the other state.

"2. If either state claims that the development and use of ground water or water from springs in the other state reduces the amount of water which said state would have received under its allocation if such ground water or water from springs were not developed and used, it may file a protest with the commission in accordance with the rules of the commission. The commission is empowered to receive evidence on any protest and make its ruling thereon.

"ARTICLE X. INTERBASIN TRANSFERS OF USE

"Either state may use directly, by exchange, or otherwise its allocated waters of the Truckee River in the Lake Tahoe Basin or the Carson River Basin, or its allocated waters of the Carson River in the Lake Tahoe Basin or the Truckee River Basin. The commission shall have authority to take such action as it deems appropriate so that the allocations of water made by this compact to either state shall not be adversely affected by such use in the other state.

"Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River watershed or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article V of the compact.

"ARTICLE XI. SUPPRESSION OF EVAPORATION

"A. Either state is entitled, but not obligated to participate in any project for the conservation of water through the suppression of evaporation. The yield of any such project shall be allocated to each state by the commission in such proportion as shall be determined by the commission, taking into consideration such factors as the commission deems pertinent. Such allocation of yield to each state shall be in addition to the waters allocated to each state by other provisions of this compact.

"B. Subject to the power of the commission to allocate the increased yield resulting from suppression of evaporation as set forth above, no existing property right shall be adversely affected except by agreement with the owner, or as may be otherwise permitted by state law. Nothing herein shall diminish or supersede any law of either state regarding water quality, including but not limited to conditions affecting fish and wildlife.

"ARTICLE XII. COORDINATION OF RESERVOIRS

"A. The commission shall have the authority to prepare plans for the coordination of reservoirs and the method of implementation of any such plans prepared, and to approve the same and to review and revise such approved plans from time to time as the commission may deem appropriate. Prior to the preparation of any such plan and implementation or review or revision thereof, the owners of all reservoirs to be affected thereby shall be given the opportunity of participating in such preparation, review, or revision.

"B. Prior to the approval thereof, the commission shall provide for public hearings concerning such a plan, review, or revision upon such notice as the commission deems appropriate.

"C. Any owner of a reservoir shall have the right to refuse to participate in any such plan, or method of implementation, or review or revision thereof, and in such event such reservoir shall be excluded therefrom, and any plan or implementation or review or revision concerning other reservoirs as may be approved shall not adversely affect the use of the reservoir or the right to the use of water therefrom, which has been excluded.

"D. Owners of reservoirs may develop plans for coordination thereof, but shall give written notice to the commission at least 60 days prior to their implementation.

"ARTICLE XIII. FISH, WILDLIFE, AND RECREATION

"The use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is, therefore, beneficial.

"ARTICLE XIV. NONCONSUMPTIVE USE

"Each state may use water for nonconsumptive purposes, including but not limited to flood control, recreation, fishery and wildlife maintenance and enhancement, and hydroelectric power generation, provided that such uses result in no discernible reduction in the water allocated to the other state.

"ARTICLE XV. DIVERSION AND EXCHANGE OF YIELD FROM FUTURE RESERVOIRS

"Upon the construction of a surface storage project or projects to store unused water herein allocated, users who become entitled to the yield therefrom may, at any point where water is physically available, divert water to use subject to approval of the commission and conditioned upon providing water in exchange for such diverted water as directed by the commission, so that other users, including owners of reservoir storage or owners of interest in waters stored, receive their entitlement of water in time, place, and quality the same as if the diversion and exchange had not been made.

"ARTICLE XVI. CHANGE OF POINT OF DIVERSION, MANNER, PURPOSE, OR PLACE OF USE

"Any change of point of diversion or of manner, purpose or place of use of the waters of the Carson, Truckee or Walker River Basins may be made in either state pursuant to state law or applicable court decree, provided that such change shall not adversely affect the allocation of water to the other state. Either state, if permitted by state law, may permit a change to other use of water formerly consumed by natural subirrigation on meadows. It shall be the duty of each state to initiate proceedings before the commission if it believes that such change in the other state would adversely affect its allocation. In the event of the initiation of such a proceeding a commission hearing shall be held and the person desiring the change shall have the burden of establishing that such change would not adversely affect the allocation to the complaining state. In the event the person desiring the change does not establish that such change would not adversely affect the allocation to the complaining state, the commission shall enter such order as it deems appropriate to assure that the allocation to the complaining state is not adversely affected.

"ARTICLE XVII. IMPORTED WATER

"The provisions of this compact respecting allocation of water are applicable solely to the waters of the Truckee, Carson, and Walker River Basins and the Lake Tahoe Basin. To the extent that either state imports into the Truckee, Carson or Walker River Basins or the Lake Tahoe Basin water from another river or source the state making the importation shall have the exclusive use of such imported water unless by written agreement between the states it is otherwise provided. Nothing herein shall preclude either state from using such imported water as replacement or exchange water to meet such conditions as may be imposed by the commission pursuant to the provisions of this compact.

"ARTICLE XVIII. COMPACT EFFECT

"A. Each state and all persons using, claiming, or in any manner asserting any right to the use of the waters of Lake Tahoe, Truckee River, Carson River, and Walker River Basins, shall be subject to the terms of this compact.

"B. The provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses, or other authorizations relating to the waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

"C. Nothing in this compact shall abridge, limit or derogate against any claim or right of anyone to the use of water in either state within the allocations to such state that could or may be made or established under state or federal law had this compact not been adopted; provided, that the place of use, under such right, of water from any of the four basins covered by this compact shall be limited to such basin or such other areas outside such basin as are permissible places of use of water from such basin under this compact.

"D. Nothing in this compact shall be construed as granting to any person or entity the right to divert, store, or use water.

"ARTICLE XIX. VIOLATIONS

"A. Violations or threatened violations of any of the provisions of this compact which come to the attention of the commission shall be promptly investigated by it. If after such investigation the commission determines further action is necessary it may take such action as it deems advisable including, but not limited to, the commencement of an action injunctive or otherwise in its own name in any court of general jurisdiction of the state where the violation has occurred or is threatened, or the United States District Court for the district where said violation has occurred or is threatened, or if it is determined by the commission appropriate to do so, refer the matter with its recommendations, if any, to an appropriate federal, state, or local official or agency or board for action.

"B. In any action concerned with any matter in which the commission has made a decision, the findings of the commission shall constitute prima facie evidence of the facts found.

"ARTICLE XX. RECOURSE TO COURTS

"Nothing in this compact shall be construed to limit or prevent either state or any person or entity from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of its provisions, provided that in all matters in which the commission is given jurisdiction by this compact to make a decision no such court action shall be commenced until the matter has been submitted to the commission for decision and decided by it, unless a decision by the commission has been unreasonably delayed.

"ARTICLE XXI. NONIMPAIRMENT OF RIGHTS OF UNITED STATES

"Except as provided in Article XXII nothing in this compact shall be construed as:

"A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

"B. Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Truckee, Carson, or Walker River Basins or the Lake Tahoe Basin, or its capacity to acquire rights in and to the use of said waters.

"C. Subjecting any property of the United States, its agencies or instrumentalities to taxation by either state or subdivision thereof.

"D. Subjecting any property of the United States of America, its agencies or instrumentalities to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

"ARTICLE XXII. RATIFICATION AND CONSENT

"This compact shall become effective when, but only if,

"(1) It shall have been ratified by acts of the Legislature of each of the States of California and Nevada;

"(2) It shall have been consented to by act of Congress of the United States; and

"(3) Congress provides in its consent legislation or by separate legislation that the following provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America:

"Article V, Section D
"Article V, Section F
"Article VI, Subsection B.1
"Article VI, Subsection B.3
"Article VI, Subsection B.4
"Article VI, Section D
"Article VII, Section A
"Article VII, Section B
"Article VII, Section C
"Article VII, Section D
"Article VII, Section E

"Article VIII, Subsection A.4(b)

"Article VIII, Subsection B.1

"Article VIII, Subsection B.5

"ARTICLE XXIII. TERMINATION

"This compact may be terminated any time by legislative consent of both states, but notwithstanding such termination all rights then established hereunder or recognized hereby shall continue to be recognized as valid.

"In witness whereof the commissioners have executed six counterparts hereof, each of which shall be and does constitute an original and one shall be deposited with the Administrator of General Services of the United States of America, and two of which shall be forwarded to the Governor of each signatory state, and one of which shall be made a part of the permanent records of the California-Nevada Compact Commission."

RESERVATION OF RIGHTS

SEC. 2. The right to alter, amend, or repeal this Act is expressly reserved.

EFFECTIVE DATE

SEC. 3. The consent granted by this Act shall take effect on the date of enactment of this Act.

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Senator LAXALT. I understand Congresswomen Vucanovich is on the way. I think what we will do, then, again in the interest of time, is proceed with the first panel, if it is all right with you, and at the time she comes in we will cease and desist.

The first panel that we have consists of assemblymen from the great State of Nevada, Mr. Bergevin and Dini. Step forward, please. We have Roland Westergard, who for a long while has conducted the affairs of the department of conservation and natural resources; David Kennedy, who is the director of the department of water resources; and Wayne Marchant, Acting Assistant Secretary for Water and Science.

Welcome, gentlemen. You can proceed in any way that you would like.

STATEMENT OF A PANEL CONSISTING OF ROLAND D. WESTERGARD, DIRECTOR, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, STATE OF NEVADA, ACCOMPANIED BY JOSEPH E. DINI, JR., MEMBER, NEVADA STATE ASSEMBLY, AND LOUIS W. BERGEVIN, MEMBER, NEVADA STATE ASSEMBLY; DAVID N. KENNEDY, DIRECTOR, DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA; AND WAYNE N. MARCHANT, ACTING ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Mr. WESTERGARD. Mr. Chairman, I am Roland D. Westergard, Director of Nevada's Department of Conservation and Natural Resources. It is my pleasure to submit for the record a statement by Gov. Richard Bryan in support of the legislation before you.

As you have indicated, Mr. Chairman, in the interests of time, I would also like to submit a written statement which I have prepared, and if it is permissible I would like to identify a few other entities that have asked that their testimony be submitted and identified for the record, Mr. Chairman.

Senator LAXALT. Well, first of all, the statements of the Governor and yourself will be filed.

[Prepared statements of Mr. Westergard and Governor Bryan and responses to written questions follow:]

PREPARED STATEMENT OF ROLAND D. WESTERGARD

My name is Roland D. Westergard, Director of the Department of Conservation and Natural Resources of the State of Nevada, and I welcome this opportunity to present testimony in support of S.2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact.

I first became involved in the interstate negotiations to arrive at an equitable allocation of the water supplies of the Truckee, Carson and Walker rivers and Lake Tahoe between the States of California and Nevada in 1960. I served as Nevada State Engineer from 1967 until 1979, during which time I was also the Chairman of the Nevada Compact Commission and a member of the Interstate Commission. I participated in hundreds of Commission and Committee meetings as a representative of the State of Nevada.

Since 1979, I have been Director of the Department of Conservation and Natural Resources and have remained intimately familiar with the applicability and validity of the Interstate Compact which was formulated and adopted by the States of California and Nevada.

I had prepared reports and statements on the Compact which are included in Congressional records involving previous legislation on the subject. However, it is respectfully requested that this testimony be made a part of the record of the Subcommittee on the Constitution of the Committee on the Judiciary of the United States Senate.

The California-Nevada Interstate Compact was formulated to provide each of the States of California and Nevada their equitable share of the interstate waters of Lake Tahoe and the Truckee, Carson and Walker River Basins. The compact is intended to resolve many of the problems rising from each state's increasing use of a limited, common water supply. These problems, which finally resulted in the determination to negotiate an interstate compact, first came to public light in the late 1940's when the State Engineers of California and Nevada faced difficulties in the administration of water rights on the Truckee, Carson and Walker River systems. The principal water using agencies in the lower basins were protesting all new water right applications on these streams which were not supported by long-term carryover storage. These agencies took the position that there was no unappropriated water available from natural flow in excess of their rights.

In 1947-48 an attempt was made to resolve this water right problem in the Lake Tahoe Basin. An investigation of the use of water in the Lake Tahoe watershed was made jointly by the two states in 1948, and results were reported in June 1949. The report concluded that granting applications then pending or those to be filed within the then forseeable future for use within the

Tahoe Basin for domestic purposes and recreational uses would have little, if any, effect toward depleting Lake Tahoe to the detriment of downstream users. The report went on to recommend that in regard to applications for appropriation of water for domestic and recreational use in the Lake Tahoe watershed, it should be the general policy to continue to grant such applications. Subsequently, the State Engineers of the two states issued permits for water for domestic purposes over the protests of downstream water user organizations.

During the early 1930's, the Lake Tahoe Interstate Water Conference Committee, created by the Governors of Nevada and California, was actively engaged in adjusting conflicting differences raised by the then proposed "Truckee River Agreement". The Federal Government proposed to execute this agreement with Nevada water users as a supplement to the 1915 Truckee River Decree. As a result of the Conference Committee's efforts, provisions were incorporated into the decree establishing a maximum permissible water level for Lake Tahoe of 6229.1 feet above sea level. This maximum stands today and provides protection against avoidable flooding for all the properties adjacent to the Lake.

In the Carson River Basin, from 1941 through 1949, the California State Engineer provided watermaster service on the West Carson River. In 1950, the State watermaster was replaced by a Federal watermaster acting under a preliminary adjudication and temporary restraining order filed in the case of United States v. Alpine Land and Reservoir Company, et al. This case, initiated in 1925, was being pushed after many years of inactivity, in order that the water rights of the Carson River System would be adjudicated prior to construction of the Washoe Project of the U. S. Bureau of Reclamation. A final decree was entered in the Alpine case in 1980 by the federal district court for Nevada.

In the early 1950's the Walker River Irrigation District instituted engineering studies of potential water projects on the Walker River for the benefit of the District lands in Nevada. These studies revealed that the various projects would utilize nearly all of the remaining unappropriated waters of this river. This alarmed the Walker River water users in California and made them more aware than ever of the need for a settlement of the claims on the Walker River.

As a result of these water conflicts, the desirability of an interstate compact between California and Nevada was discussed by the two states. However, it was not until 1955 that legislation was obtained initiating compact negotiations. The legislation received further impetus at that time from the pending authorization of the Washoe Project, a Bureau of Reclamation Project to develop additional waters in the Truckee River and Carson River Basins.

Under similar legislation passed by the legislatures of California and Nevada in 1955, each state established a commission for the purpose of negotiating an interstate compact which would provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker River Basins.

Federal legislation was also passed authorizing these negotiations and providing for the appointment and participation of a federal representative.

In general, provisions of the interstate compact, which were arrived at after nearly thirteen years of negotiations, reflect several basic principles. These can be summarized as follows:

1. Existing rights and beneficial uses are recognized as having the highest priority of use of available waters.

2. Waters not needed to satisfy these recognized existing rights and beneficial uses are to be divided in proportion to water needs of the two states.

3. Uses of water made under federal claims of right in each state are to be considered as benefiting the state in which the use is made and hence are to be charged against the allocation of that state.

Summary of Major Provisions of Compact

ARTICLE IV - California-Nevada Interstate Compact Commission

Article IV establishes a permanent commission, provides for the selection of members and provides for the funding for the work of the commission. The ex-officio chairman of the commission is a representative of the United States to be chosen by the President of the United States.

ARTICLE V - Lake Tahoe Basin

Upon construction and completion of an overflow weir at the source of the Truckee River above the existing structure at the outlet of the Lake, the total annual gross diversion from all sources in the Lake Tahoe Basin shall not exceed 34,000 acre-feet. The State of California is allocated 23,000 acre-feet annually and the State of Nevada is allocated 11,000 acre-feet annually for use within the Basin.

Existing transbasin diversions as of December 31, 1959, from the Lake Tahoe Basin in both states may be continued if such rights were recognized as vested rights under the laws of the state in which the diversion is made. The existing transbasin diversions recognized by the compact are: 1) In California, a diversion from Echo Lake, a tributary of the Upper Truckee River Basin, into the American River Basin in California averaging approximately 1,700 acre-feet per year. 2) A Nevada transbasin diversion is from North Creek (Third Creek), a tributary of Lake Tahoe, into Washoe Valley of 5.5 cubic feet of water per second. 3) A second Nevada transbasin diversion of a maximum of 3,000 acre-feet annually from Marlette Lake for use in Nevada.

These three transbasin diversions recognized by the Compact are historical uses and in existence on December 31, 1959. In Nevada the diversion from North Creek into Washoe Valley was determined by a District Court in Washoe County, Nevada, in 1692. The Marlette Lake diversion represents a part of the water system started in 1872 by the predecessors of the Virginia City Water Company to bring water from the Sierras to Virginia City to operate the ore reduction mills of the newly discovered silver bonanza.

ARTICLE VI - Truckee River Basin

The first allocation to Nevada is for water for use on the Pyramid Lake Indian Reservation in the amounts provided in the 1944 Truckee River Decree (Final decree in United States vs. Orr Ditch Company, et al., U. S. District Court for the District of Nevada, Equity No. A-3). This allocation recognizes the authority of the Federal Court Decree to serve an early priority (1859) of water to the Pyramid Lake Indian Reservation of some 30,000 acre-feet annually.

There is allocated to California: 1) The right to divert 10,000 acre-feet of water per calendar year within the Truckee River Basin in California. This water may be stored in reservoirs at times when the flow in the Truckee River at the Iceland gauge exceeds 500 cubic feet per second. This is the provision in the compact to allocate water from the Truckee River for use in California which was not a part of the Truckee River Decree of 1944. 2) The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of the United States vs. Sierra Valley Water Company in the U. S. District Court for Northern California. The amount of water decreed to the Sierra Valley Water Company totaled 60 cubic feet per second for irrigation, domestic and stockwatering during the irrigation season of March 15 to September 30 of each year. 3) Six thousand acre feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet. California may divert all or any portion of said 6,000 acre-feet from Stampede Reservoir directly or by exchange from any source on the Truckee River or its tributaries or from Lake Tahoe. 4) When the 16,000 acre-feet allocated to California is being used or its total use is imminent, California will be permitted to develop additional yields of water for use in California, either directly or by exchange if all existing beneficial uses in Nevada are recognized. Nevada may share in such additional yield by bearing a proportionate cost of the development. 5) The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually. There is allocated to Nevada all water in excess of the allocations made to California.

ARTICLE VII - Carson River Basin

There is allocated to the State of California: 1) The right to divert from the West Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second per 100 acres or 168 cubic feet per second for the area as a whole but not to exceed a maximum aggregate diversion of 185 cubic feet per second. One unique feature of the Compact is that it provides for the rotation of all or a portion of the flow of the West Fork between California and Nevada users if the flow falls below 175 cubic feet per second. 2) The right to divert from the East Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands, determined to be approximately 3,830 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second or 115 cubic feet per second for the area as a whole. 3) The right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands adverse to Lahontan Reservoir.

There is allocated to the State of Nevada: 1) The right to divert water from the Carson River and its tributaries commencing March 15 and ending October 31 of each year at the rate of 3 cubic feet per second per 100 acres for use on presently irrigated lands above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 cubic feet per second per 100 acres is based on a thirty-day average for the area as a whole and shall not exceed 700 cubic feet per second on the East Fork Carson River, 300 cubic feet per second on the West Fork Carson River, and 220 cubic feet per second on the Main Carson below the confluence. 2) The right to divert or store water in Lahontan Reservoir for use on the Newlands Project subject to diversion for existing irrigation use and to the right of each state to store waters upstream from Lahontan Reservoir.

Both states are allocated the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacities. Present uses of water on National Forest Lands in the Toiyabe National Forest are confirmed and recognized by both states. Additional yields shall be available for development under the currently authorized Washoe Project in excess of existing beneficial uses in Nevada as recognized by Nevada Law. Such additional yields shall be allocated between the State with equal priority, 20 percent allocated to California and 80 percent allocated to Nevada. Each state has the right to participate in any development project by bearing a proportionate cost of such development. In the event a joint development is not feasible or desirable, each state may develop separately its proportionate share of the remaining water. Waters of the Carson River are not to be used outside the Carson River Basin except by exchange of other allocated waters from the Lake Tahoe or the Truckee River Basins.

ARTICLE VIII - Walker River Basin

The provisions of the decree in the case of United States vs. Walker River Irrigation District, et al., known as Decree C-125, are recognized and confirmed. 2) The right under Decree C-125 to store 85,000 acre-feet of water from the West Walker River in Topaz Reservoir is recognized and confirmed subject to certain exceptions. The first is that a maximum of 85,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 through October 31 of the following year. The second is that the maximum rate of diversion to each reservoir is 1,000 cubic feet per second. And third, that water qualified for storage and allowed to pass through the reservoir and not rediverted in Nevada will be deemed to have been held in storage. 3) The right under Decree C-125 to store 57,000 acre-feet of water from the East Walker River in Bridgeport Reservoir is recognized and confirmed subject to certain exceptions. The first being that a maximum of 57,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 to October 31 of the following year; and secondly, water may be stored upstream from the Bridgeport Reservoir without loss to the quantity allocated for storage in the Bridgeport Reservoir. 4) Each state is allocated an amount for existing diversions and uses of water from the Walker River upstream from the Weber Reservoir and not specifically covered in Decree C-125. The Commission after being established to administer the compact will ascertain the amounts and priorities of such uses.

In addition to the allocation to recognize and confirm the provisions of the Walker River Decree C-125, there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet for storage in Weber Reservoir and a later rediversion to use and in addition 9,450 acre-feet per year, both allocations to have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second.

California is allocated the right to divert water from the West Walker River at the time Topaz Reservoir is storing water, if such diversions have no net effect on the Topaz Reservoir storage for the season.

There is allocated to the State of California, 35 percent of unused waters or waters in excess of the amounts allocated or required to satisfy all rights and uses recognized and confirmed. There is allocated to the State of Nevada 65 percent of such unused water. The reregulation of storage waters allocated are not to be considered as the development of "unused water". Separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated.

ARTICLE X - Interbasin Transfers of Use

Article X provides that either state may, directly or by exchange, use the allocations of the Truckee River in the Lake Tahoe or Carson River Basin and the waters of the Carson River in the Lake Tahoe or Truckee River Basin. It further provides that

Lake Tahoe may be used as a physical facility to accomplish such an exchange.

ARTICLE XIII - Fish, Wildlife and Recreation

This article determines that the use of water for preservation, protection and enhancement of fish, wildlife and recreation is recognized as a beneficial use.

ARTICLE XXI - Non-Impairment of Rights of United States

Article XXI provides that, except as provided in Article XXII, the Compact cannot be construed as affecting the obligations of the United States to the Indians and Indian tribes or any right owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States. Nor shall it affect any rights or powers of the United States or its agencies in or to the waters of the Truckee, Carson or Walker River Basin or the Lake Tahoe Basins or the capacity of the United States to acquire rights in and to the use of those waters. Nor may it be construed as subjecting any property of the United States to taxation by either state. Nor may it be construed as subjecting any property of the United States to the laws of any state to an extent other than the extent to which such laws be applied in the absence of the Compact.

ARTICLE XXII - Ratification and Consent

Article XXII provides that the Compact shall be effective as it has been ratified by legislators of Nevada and California and has been consented to by act of Congress of the United States and that Congress has provided in its consent legislation or by separate legislation that certain provisions of the Compact shall be binding upon the agencies, wards and instrumentalities of the United States.

In 1965, a provisional draft of Compact was adopted by the two states. This was submitted to all interested agencies for comments and suggestions. Many federal agencies including Interior, Justice, Agriculture, and Commerce responded with comments and suggestions on how the Compact might be improved. Following the receipt of the comments of the federal agencies, California and Nevada spent two more years negotiating. The comments of the federal agencies were considered and utilized, and resulted in many changes in the proposed Compact. In some few instances the two states felt that the suggestions of the federal agencies could not be incorporated in the Compact.

In 1968, following the completion of the present Compact, the two states answered comments of the federal agencies to the 1965 draft. In many cases the suggestions had been adopted and in those instances in which they could not be used, the commission explained the reasons therefor.

Those provisions which the two states believe the United States should agree to be bound are found in Article XXIII of the Compact and concern only the total amount of water allocated to each state.

It is of utmost importance for the governing agencies of the United States to understand that the United States is not bound to any particular use within either of the two states nor to any particular development of any future project within the states, but would only be bound with respect to the allocations of water between the two respective states. Consequently, for effective administration and effective allocation, the states of California and Nevada believe most strongly that it is necessary for the United States to consent to enter into a binding contract insofar as Article XXII of the Compact is concerned.

The United States owns or controls almost all the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. Its failure to agree to the allocations provided in the Compact would nullify the force and effect of the substantive provisions of said Compact. As an example, the United States claims the rights to all water stored in Lake Tahoe between elevations 6223 and 6229.1, or approximately 720,000 acre-feet of water. The Compact provides for use within the Tahoe Basin of 34,000 feet allocated on the basis of approximately 2/3 to California and 1/3 to Nevada.

The area to which the Compact applies is one which unfortunately cannot claim either a firm or sufficient supply of water for its potential domestic, industrial and recreational development. Thus, present uses are provided for in the Compact in terms of allocation of the water to the respective states with the hope that conservative use may allow some development for the future in these areas.

Should the United States refuse to agree to these allocations and refuse to consent to be bound by them, neither state can plan, develop or assume its individual obligation for what appears to be its future destiny. Certainly presently unused waters that are available and could be developed in the future would entail partnership of the United States as a party to the development. Each of the two states look to the United States as a partner in such development rather than as a partisan. The waters in excess of present uses have been allocated as between the two states and if the United States as a partner in the development of any future project, which at present appears to be the only realistic approach, were not bound by the allocations of water the agreements between the two states would be of no effect.

It is extremely important to recognize that the Compact was first ratified by the Nevada Legislature in 1969, by the California Legislature in 1970, and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California a year earlier. Congressional ratification has not been secured because of the continuing litigation that would be settled and dismissed under the provisions of Title I, of this Act. It is also critical to recognize that the States of Nevada and California have operated under, complied with and recognized the provisions of the Compact over the fourteen year period from 1970 to date. This period of time has conclusively demonstrated the validity, effectiveness and the applicability of the document and further confirms that it does, in fact, provide for an equitable allocation of water between the states in a manner which is not detrimental, nor adverse to the interest or prerogatives of any water user or interest in either state.

On behalf of the State of Nevada, we respectfully urge your favorable consideration of the legislation before you.

TESTIMONY OF

RICHARD H. BRYAN, GOVERNOR
STATE OF NEVADA

Mr. Chairman, my name is Richard Bryan and as Governor of the State of Nevada, I appear here before your Committee this morning on behalf of my State in support of the legislation which you have before you.

Conflicts regarding the allocation, distribution and use of water supplies of the Truckee, Carson and Walker rivers and Lake Tahoe basins have raged for many years. Enactment of S.2457 to grant the consent of Congress to the California-Nevada Interstate Compact will resolve past controversies between the states and would preclude any future disagreements or controversies regarding allocation of waters of the three stream systems and Lake Tahoe between the two states.

The genesis of this Compact dates back to the early 1930's as conflicts between the two states arose over the administration and distribution of the waters of the Truckee, Carson and Walker rivers and Lake Tahoe. As a result of these conflicts, in 1955, the Legislatures of the two states established a commission for the purpose of negotiating an interstate compact. Federal legislation was also passed authorizing negotiations and providing for the appointment and participation of a federal representative.

Negotiations between representatives of the two states and interested parties within both states proceeded over a period of fourteen (14) years. The negotiations involved literally hundreds of meetings of a joint commission, individual state commissions and various subcommittees of the commissions.

The Compact is predicated upon the following basic principles: It recognizes the existing rights and beneficial uses of available waters. Waters not needed to satisfy these required uses are divided in proportion to the water needs of the two states. Uses of water made under federal claims in each state are considered as benefitting the state in which the use is made and hence are charged against the allocation of that state.

The Compact sets forth specific allocations of water for use in the Lake Tahoe, Truckee, Carson and Walker river basins. The Compact is binding upon the agencies, wards and instrumentalities of the United States. These provisions to which the United States would agree to be bound concern only the total amount of water allocated to each state.

It is of the utmost importance to understand that the United States is not bound to any particular use within either the two states, nor to any particular development of any future project within the states.

It would only be bound with respect to the allocations of water between the two respective states. Failure of the United States to agree to the allocations provided in the Compact would nulify the force and effect of the substantitive provisions of the Compact.

It is significant to understand that the Compact was first ratified by the Nevada Legislature in 1969 and the California Legislature in 1970 and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California one year earlier.

Congressional ratification has not been secured because of continuing litigation. There have been concerted efforts to settle and terminate that litigation, but those efforts have not been conclusive nor successful. It is, therefore, imperative that we proceed with enactment of S.2457 to provide for an equitable apportionment of the waters of the three stream systems and Lake Tahoe between the two states.

Nothing in the Compact precludes the resolution of intra-state conflicts regarding appropriation, allocation or use of waters by various interests through continued litigation settlement or other appropriate actions.

The States of Nevada and California have operated under and complied with the provisions of the Compact over the sixteen year period from 1970 to date. This period of time has conclusively demonstrated the validity and effectiveness of the Compact and further confirms that it does, in fact, provide for an equitable allocation of water between the states in a manner which is not detrimental to, nor adverse to the interests or prerogatives of any water user or interest of either state.

It is also important to note that during the years of negotiations the Federal government was represented by an appointee of the President as well as legal counsel from the Solicitor's Office. All of the meetings of the negotiating commissions and subcommittees were open to the public and there was extensive participation by various water user groups, agencies of the United States and of the various Indian Tribes. There was every opportunity for the views and concerns of any individual or entitity to be addressed and, in fact, the negotiating commission did consider, evaluate and reach conclusions on the various competing claims and positions.

It is also imperative to recognize that in 1965 a provisional draft of Compact was adopted by the two state commissions. This was submitted to all interested agencies for comments and suggestions. There were also extensive hearings held by the Interstate Compact Commission in various locations throughout the Compact area prior to final adoption by the negotiating commission. Subsequently, there were also extensive hearings before both the Nevada and California Legislatures where opportunity was presented for testimony and comment.

The Compact provides for the creation and composition of a commission with powers to enforce the provisions of the Compact, specifically relating to the allocation of water supplies of the three stream systems and Lake Tahoe between the states. Appointment of members to the commission by the Governor of each state assures that fair and objective representation for all water users within the two states can and will be afforded.

On behalf of the State of Nevada, I respectfully urge you and your committee and the Congress to give favorable consideration to the legislation before you to meet the purposes of the Compact to provide for the equitable apportionment of water between the two states; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversy; to permit orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River and Walker River basins.

Thank you Mr. Chairman

STATE OF NEVADA RESPONSES TO QUESTIONS
BY SENATOR HATCH AND SENATOR DeCONCINI
RELATING TO THE CALIFORNIA/NEVADA INTERSTATE COMPACT
PENDING BEFORE CONGRESS

RESPONSE TO QUESTIONS

QUESTION I. 1.

Has the California-Nevada Compact Commission ever authorized its representatives to enter into negotiations with the United States or the affected Indian tribes over the disputed provisions of the Compact? If so, when? And what happened? Provide documentation.

RESPONSE:

The United States was represented during the Compact negotiations by a Federal representative appointed by the President which representative served as Chairman of the commission. The United States Solicitor's office was also represented continuously throughout the negotiations. Indian Tribal representatives as well as Bureau of Indian Affairs representatives were present at many of the Compact Commission meetings.

In some instances, Tribal and Bureau of Indian Affairs representatives actually indicated specific language which they wanted included in the Compact document. Please refer to testimony of Bolton Minister before the Subcommittee on the Constitution. Subsequent to Compact ratification, representatives of the United States and the Pyramid Lake Indian Tribe participated in lengthy discussions and negotiations which resulted in proposed legislation that was considered in the Fall of 1985 by committees of the United States Congress.

QUESTION I. 2.

Describe in detail all the official comments, proposals and recommendations submitted by federal agencies on the draft 1965 Compact which were not fully agreed to by the States and are not incorporated in the Compact that was adopted by the two States in 1970 and 1971.

RESPONSE:

Attached (attachment 1) are copies of:

1. Letter of August 1, 1968 from Hubert B. Bruns, Chairman, California Commission; and Roland D. Westergard, Chairman, Nevada Commission, to J. R. Riter, Office of Chief Engineer, U.S. Bureau of Reclamation, Building 67, Denver Federal Center, Denver, Colorado 80225, transmitting material on Federal Agency comments including:

   1) United States Department of Interior.

2) United States Department of Agriculture.

3) United States Departments of Justice and Commerce, Federal Water Pollution Control Administration, Federal Power Commission.

4) Separate letter of August 1, 1968 from Hubert B. Bruns, Chairman, California Commission; and Roland D. Westergard, Chairman, Nevada Commission, to J. R. Riter, Office of Chief Engineer, U.S. Bureau of Reclamation, Building 67, Denver Federal Center, Denver, Colorado 80225, regarding comments of the Department of Justice.

2. An undated document entitled, "Substantive Problems With California-Nevada Compact".

3. Letter of August 18, 1971 from Robert B. Bond, Assistant Secretary, California-Nevada Compact Commission, to Donald E. Crabill, Chief, Natural Resources Programs Division, Office of Management and Budget, Executive Office of the President, Washington, D.C. 20503, including responses to document entitled, "Substantive Problems With California-Nevada Compact".

QUESTION I. 3.

What is the effect of Article III(A) not being made binding on the U.S. and Indian tribes in light of Articles XXI and XXII?

RESPONSE:

There are no inconsistencies between the provisions cited. The Compact allocates waters between the States of California and Nevada and any claims by the United States or wards would be satisfied out of the allocation to the respective States.

QUESTION I. 4.

What is the effect of Article III(C) not being made binding on the U.S. and Indian tribes in light of Articles XXI and XXII?

RESPONSE:

There are no inconsistencies between the provisions cited. The provisions of Article IIIC are an integral part of the overall document, but specifically provide and are binding regarding uses of water in each State as it relates to the allocation to that State.

QUESTION I. 5.

What is the effect of Article XVIII(C) not being made binding on the U.S. and Indian tribes in light of Articles XXI and XXII?

RESPONSE:

There is no effect.

QUESTION I. 6.

What is your view of the apparent conflict between Articles III(A) and XVIII(C) in that Article IIIA provides that state law shall determine the rights to the use of the waters allocated to each state whereas Article XVIII(C) purports to protect water rights under either state or federal law?

RESPONSE:

There is no conflict between the provisions cited. Obviously State law would recognize provisions of Federal law.

QUESTION I. 7.

Explain the relationship between Articles III(A), which makes Nevada law applicable to the determination of all rights to the use of water within Nevada, and Article XVIII(C), which protects the rights of anyone to use water within the allocations made to the states under either state or federal laws.

RESPONSE:

Nevada law obviously would recognize Federal laws. There are no inconsistencies.

QUESTION I. 8.

Explain the relationship between Articles III(A) and XVIII(C) as applied to the United States and the Pyramid Lake Indian Tribe in light of Articles XXI and XXII and the fact that neither Articles III(A) nor XVIII(C) are made binding on the United States and Indian tribes.

RESPONSE:

There are no inconsistencies between the provisions cited. It was necessary to provide language to bind the United States to allocations between the States and other provisions are similarly binding as to their effect on all interests and parties.

QUESTION II. 1.

Describe in detail precisely what rights of the United States are ratified and confirmed by virtue of Article V(A)? To what degree, if at all, does Article V(A) ratify and confirm the Floriston Rates as set forth in either the Truckee River Agreement or the Decree in United States v. Truckee River General Electric Co.?

RESPONSE:

The right to use Lake Tahoe as a storage facility is ratified and confirmed. The provision has no effect on the Floriston Rates, the Agreement or the Decree other than to recognize the allocation for use within the Lake Tahoe Basin.

QUESTION II. 2.

What is the practical and legal effect of Article V(A) not being made binding on the United States and Indian tribes?

RESPONSE:

There is no effect.

QUESTION II. 3.

Describe in detail the transbasin diversions from the Lake Tahoe Basin that may be continued under Article V(E) and the amount of water involved in each such transbasin diversion.

RESPONSE:

The transbasin diversion from Marlette Lake for use in Nevada is limited to a maximum of 3,000 acre-feet per annum. Franktown Creek Irrigation Company has an 1892 Decreed right to divert 3978 acre-feet from North Creek to Franktown Creek Irrigation Company lands in Washoe Valley via Ophir Creek.

QUESTION II. 4.

Isn't it necessary to substantially revise or eliminate Article VII from the Compact in light of the subsequent entry of the Final Decree in the Alpine case in 1980? If not, why not?

RESPONSE:

No. The Compact provisions merely determine and provide for an allocation of waters of the Carson River between the States of California and Nevada and the individual water rights would be served and administered in accordance with the Alpine Decree. (Please refer to attached copy of letter dated October 28, 1985 to The Honorable Morris K. Udall, Chairman, Committee on Interior and Insular Affairs, 1324 Longworth Building, Washington, D.C., 20515, from Roland D. Westergard, Director, Conservation and Natural Resources Department, for more details on this issue.) (Attachment 2.)

QUESTION II. 5.

What is the relationship between Article VII of the Compact and the 1980 Final Decree in the Carson River water rights adjudication, United States v. Alpine Land & Reservoir Co.?

RESPONSE:

Article 7 merely allocates to the respective States quantities of water necessary to satisfy the individual rights under the Alpine Decree.

QUESTION II. 6.

What is the effect of the allocations in Article VII, insofar as those allocations provide greater amounts of water than the 1980 Final Decree in the Carson River adjudication, United States v. Alpine Land & Reservoir Co.?

RESPONSE:

The effect is to provide for an allocation between the States and waters over and above those necessary to satisfy the individual decreed rights would be divided in accordance with the provisions of the Compact.

QUESTION II. 7.

What are the respective powers and duties of the Federal Court and the Federal Water Master to administer and enforce the 1980 Alpine Decree and of the Compact Commission to administer and enforce Article VII of the Compact?

RESPONSE:

The Federal Court and Federal Water Master would administer the specific provisions of the Alpine Decree and the Compact Commission would be responsible for determinations regarding the interstate allocations. There are no inconsistencies.

QUESTION II. 8

Why are existing beneficial uses of water for fish, wildlife and recreational purposes in Nevada omitted from Article VI(B) (4) (a) when all other existing beneficial uses are protected?

RESPONSE:

Refer to response to question VI 1.

QUESTION II.

(1) Article XXI of the Compact makes a point of emphasizing that the Compact won't affect either federal obligations to Indians or the rights or Indians. But then, Article XXII requires that Congress make the federal provisions of the Compact "binding on . . . the wards of the U.S.," which is really an indirect reference to Indian Tribes.

Why did the drafters require the guts of the Compact to be binding on the Indian Tribes if they were trying to preserve indian rights?

What Indian rights would this clause cut off?

[If the witness says "none", then ask: "Well, then, why is it needed and would you be willing to delete it?"]

RESPONSE:

(1) Rights and uses of all parties, including Indian Tribes, are to be exercised within the allocation to the State where the use is to be made. The clause would not "cut off" any established rights. Please refer to the transcript of Roland D. Westergard's testimony, page 47, in response to Senator DeConcini's question.

QUESTION II.

(2) Let me pursue this thought. Article XVIII(C) states that "nothing in the Compact shall abridge, limit or deregate" anyone's right to use the water in either state which would have under state or federal law in the absence of the Compact.

This has been cited as a "savings clause" which will preserve existing legal rights of Indians and others. But Section C goes on to add a long proviso sharply limiting the savings clause:

> "....provided, that the place of use, under such right, of water from any of the four basins covered by this compact shall be limited to such basin or such other areas outside such basin as are permissible places of use of water from such basin under this compact."

Why did the drafters add that restriction in the savings clause?

What indian rights and what federal rights to water use would that additional proviso place outside the savings clause?

Would you agree to its elimination?

RESPONSE:

(2) The restriction is to preclude export of water to areas outside of the Compact area.

None.

No.

QUESTION IV. 1.

How much of the water allocated to Nevada under Article V(D) is currently appropriated and being used?

RESPONSE:

Approximately 8,600 acre-feet per year are being diverted for use. All of the 11,000 acre-feet per year is the subject of valid permits.

QUESTION IV. 2.

How much, if any, of the water allocated to Nevada in Article V(D) is now being exported out of the Lake Tahoe Basin or reused prior to its return to Lake Tahoe?

RESPONSE:

Approximately 4808 acre-feet per year of effluent.

QUESTION IV. 3.

How much, if any, of the water described in the answer to the previous question is encompassed in the allocation under Article V(E)?

RESPONSE:

None.

QUESTION IV. 4.

Are there any current applications for the export of water from the Lake Tahoe Basin in Nevada?

RESPONSE:

Yes. There are three (3) applications presently pending before the State Engineer. No action has been taken.

QUESTION IV. 5.

Are there any current applications for the reuse of water in the Lake Tahoe Basin in Nevada before such water returns to the Lake?

RESPONSE:

No.

QUESTION IV. 6.

Do you know of any plans for the export of water from, or the reuse of water in, the Lake Tahoe Basin in Nevada as authorized in Article V(D)?

RESPONSE:

No, other than export of effluent.

QUESTION IV. 7.

What plan or ideas, if any, does Nevada have or has Nevada considered for utilizing the waters of the Truckee River pursuant to Article VI(B) (4) (c)?

RESPONSE:

No specific plans have been developed.

QUESTION V. 1.

Describe the past and composition of the Nevada (or California) Compact Commission.

RESPONSE:

Nevada Revised Statutes 538.290 provide for the composition of the Commission and qualifications of Commissioners (copy attached). (Attachment 3.)

QUESTION V. 2.

How were the members of the Commission selected? Who appointed them? Were any specific interests represented? If so, which ones and at what times? How were the representatives of those interests selected?

RESPONSE:

The attached copy of the statute indicates selection and appointment procedures.

QUESTION V. 3.

How did the Nevada (or California) Compact Commission and the Joint Compact Commission conduct business? Who voted? Were the affirmative votes of both state Commissions required in order for the Joint Commission to act? Did the State Commissions act by majority vote, unanimous vote or some other vote?

RESPONSE:

Nevada and Joint Commissions conducted business in open public meetings. Members of the two State Commissions voted. Affirmative votes were required for action. The Nevada State Commission acted by a majority vote as did the Joint Commission. A matter was adopted if both Commissions voted for it.

QUESTION V. 4.

With regard to the votes on the 1965 Draft Compact and the 1968 Compact proposed by the Joint Compact Commission,

(a.) What were the actual votes of each member of both State Commissions?

(b.) Were the affirmative votes of all members of both State Commissions required for their adoption?

RESPONSE 4(a.)

The 1965 Draft and 1968 Compact received the unanimous vote of all Commissioners.

RESPONSE 4(b.)

See response to question V. 3.

QUESTION V. 5.

Was a representative of the Pyramid Lake Tribe or any other Indian tribe ever invited to participate as a formal member of the Nevada Compact Commission? If so, please provide documentation.

RESPONSE:

No.

QUESTION V. 6.

Was the Pyramid Lake Tribe (or any other Indian Tribe ever invited to participate in the Compact negotiations in any other way other than as an observer? If so, please provide documentation.

RESPONSE:

Yes. Please refer to testimony of Bolton Minister. Also prior to Compact Commission adoption of the Compact, extensive public hearings were held at which time representatives of the Tribes as well as all other interest groups were invited and encouraged to participate. Also the Tribe representatives participated in hearings before committees of both the Nevada and California State Legislature.

QUESTION VI. 1.

Would you support or agree to amendments of Article VI(B) (4) (a) which would delete the word "agricultural" and substitute the words "fish, wildlife and recreational" and would add the words "or federal" after "Nevada"? If not, why not?

RESPONSE:

No. Please refer to the transcript of Roland Westergard's testimony, page 50, in response to Senator DeConcini's question. The proposed change would invalidate the interstate allocation in that water would not be available for subsequent development if all the inflow to Pyramid Lake were committed. This was carefully considered in determining the allocations between the states.

QUESTION VI. 2.

Would you support or agree to amendments to Article VI(B) (4) (a) which would delete the words "domestic, municipal, industrial" and substitute the words "fish, wildlife, recreational" and would add the words "or federal" after "Nevada"?

RESPONSE:

No. See response to question VI. 1.

QUESTION

IF RATIFICATION OF THE COMPACT RESULTS IN THE TAKING OF WATER RIGHTS, WOULD THE FEDERAL GOVERNMENT BE LIABLE TO PAY COMPENSATION FOR THAT TAKING? AND IF SO, HOW MUCH WOULD RATIFICATION OF THIS COMPACT WIND UP COSTING THE FEDERAL GOVERNMENT?

RESPONSE:

Ratification of the Compact would not result in the taking of any known or established water rights. If any such rights existed, they would necessarily be satisfied out of the allocation tc the State in which the use of water is made.

Mr. WESTERGARD. In addition, we have a letter from Assemblyman Virgil Getto, a member of the Nevada State Legislature.

Senator LAXALT. It will be so filed.

Mr. WESTERGARD. Pete Morros, who is the Nevada State engineer and chairman of the Nevada Compact Commission.

Senator LAXALT. Filed.

Mr. WESTERGARD. And attached to Pete's statement is a resolution from the Nevada Compact Commission. We have resolutions from the respective counties in the area, including Douglas County, Churchill County, Lyon County, and Carson City.

In addition, Mr. Chairman, we have a statement from the State of Nevada Commission on Economic Development, from the Carson City Chamber of Commerce, and from the Economic Development Authority of western Nevada.

I am sure, as the hearing proceeds, Mr. Chairman, you will hear other witnesses offer statements on behalf of their constituents, but I would respectfully request that these documents be entered in the record.

Senator LAXALT. They will all be entered in the appendix of the hearing.

Mr. WESTERGARD. At this time, Mr. Chairman, it is my pleasure to introduce two representatives of the Nevada State Legislature, Assemblymen Joe Dini and Louis Bergevin.

Mr. Dini.

STATEMENT OF JOSEPH E. DINI, JR.

Mr. DINI. Mr. Chairman and members of the committee, I am Nevada Assemblyman Joe Dini, Jr., from Yerington, NV, and I appreciate the opportunity to be before you today in support of the ratification of the California-Nevada interstate compact.

I am one of the few legislators who has been active in the compact process since its inception. I have been a Nevada assemblyman since 1967. You were Governor at that time, Senator.

Senator LAXALT. I think we started on the trail together, did we not, Joe?

Mr. DINI. I guess we started together, and I made my first speech on the compact in 1967 and I am still talking about it.

I am a former speaker of the house, and I am one of only two legislators whose district encompasses all three rivers in the western Nevada area. Because of my long association with the compact, I have a perspective which provides the continuity of time.

In our age of fast food, throw-away containers, and planned obsolescence, things that last over the years and endure the times are looked upon with value. If a product can serve its purpose over the period of several years, we rightfully assume that it was well designed and well constructed.

Based upon these criteria, the California-Nevada interstate compact has already proven its value and credibility because it has stood the test of time. We come before you today seeking your approval of the same document that was originally brought to you more than 15 years ago in 1971.

The parties to the allocation of water still believe it to be a fair and equitable and, I might add, necessary distribution of scarce resources between the two States.

Negotiations on the compact were initiated between the two States in 1955. They were finally completed 16 years later in 1971. A tremendous amount of valuable time and effort went into developing a fair and equitable apportionment of water between the States.

Please try to visualize the magnitude of the figures I am going to summarize for you. I would ask that you put them into your own perspective of how much time and energy you have available to invest in the major pieces of legislation upon which you work.

The interstate compact commissions from California and Nevada met jointly on 62 separate occasions between 1956 and 1968 to work on drafting the document. Our Nevada commission met on its own an additional 137 times to take input from our citizens and work out our viewpoints. The California commission met in its own State on 75 additional occasions.

Several special committees were established to consider particular problems. The Joint Truckee River Committee met on 22 occasions. The Joint Carson River Committee had 31 independent meetings. The Joint Walker River Committee had 26 meetings. The Joint Lake Tahoe Committee met on 16 occasions. The Engineering-Legal Committee had 20 meetings, and the Special Engineering Committee held 8 additional meetings.

Separate, special committees included a drafting committee, a committee to explain the compact to interested parties, committees to consider Federal agency comments, a definitions committee, a committee on one facility, the Stampede Dam, and a water rights committee.

Again, I would ask you to put the number of hours invested in these meetings into your own legislative perspective in order to realize the huge magnitude of the efforts which have gone into the drafting of this biState compact.

Virtually every session since 1971, the Nevada Legislature has adopted a resolution requesting that Congress consider ratification of the compact. I can never remember more than two votes against the resolution in any session since we started.

We believe that now is the time for your ratification of the document, in which so much time and effort has been invested. The two States have avoided conflicts so far, but your signature is necessary to finalize the compact as the law of the land on the allocation of the waters of these river systems between the States.

The people of my district need the security of the ratified compact for their planning of the future. They need to be able to proceed with consideration of one significant project for which water rights are certified, but which has been stymied by the lack of certainty about the legal status of water distribution between the States.

You should also be made aware of one specific situation on the Walker River which has caused some misunderstanding in the past. At one time, a concern was expressed by the Walker River Indian Tribe and Mineral County, in which Walker Lake is located. These people feared that ratification of the compact would in some way negatively impact Walker Lake.

However, as has been explained, the compact only allocates water between the States. Water distribution and water rights for specific users will be handled individually by each State, just as they always have been handled.

Specifically related to Walker Lake, the State of Nevada has approved an 8,000-cubic-foot-per-second water right to the department of wildlife. This right allocates all of the storm flows and previously unallocated rights to the lake.

The State of Nevada has done all that can be done to preserve and enhance Walker Lake, and ratification of the compact will not affect the lake or its water rights in any way.

I would, in closing, like to point out that I sit on the Western States Water Council and am a member of the Water Policy Committee of the Western Conference of the Council of State Governments. The interstate compact which you are considering today is the very type of cooperative effort between States which both of these two organizations heartily advocate.

One of my colleagues in the Nevada Assembly will address some of the misconceptions which have been associated with the compact, but I would simply solicit your support for this document which has been so laboriously drafted and which has proven its value through the test of time.

Thank you.

[Prepared statement follows:]

Prepared Statement of Joseph E. Dini, Jr.

GOOD (MORNING, AFTERNOON), GENTLEMEN (AND LADIES).

I AM NEVADA ASSEMBLYMAN JOSEPH E. DINI, JR., AND I APPRECIATE THE OPPORTUNITY TO SPEAK TO YOU FOR A COUPLE OF MINUTES IN SUPPORT OF YOUR RATIFICATION OF THE CALIFORNIA-NEVADA INTERSTATE COMPACT.

I AM ONE OF THE FEW STATE LEGISLATORS WHO HAS BEEN ACTIVE IN THE COMPACT PROCESS FROM ITS INCEPTION. I HAVE BEEN A NEVADA ASSEMBLYMAN SINCE 1967, AM A FORMER SPEAKER OF THE ASSEMBLY, AND I AM ONE OF ONLY TWO LEGISLATORS WHO CAN CLAIM THAT MY DISTRICT CONTAINS PORTIONS OF ALL THREE MAJOR RIVER BASINS ADDRESSED BY THIS COMPACT.

BECAUSE OF MY LONG ASSOCIATION WITH THE COMPACT, I HAVE A PERSPECTIVE WHICH PROVIDES A CONTINUITY OF TIME. IN OUR AGE OF FAST FOOD, THROW-AWAY CONTAINERS AND PLANNED OBSOLESCENCE, THINGS THAT LAST OVER THE YEARS AND ENDURE THE TIMES ARE LOOKED UPON WITH VALUE. IF A PRODUCT CAN SERVE ITS PURPOSE OVER THE PERIOD OF SEVERAL YEARS, WE RIGHTFULLY ASSUME THAT IT WAS WELL DESIGNED AND WELL CONSTRUCTED.

BASED UPON THESE CRITERIA, THE CALIFORNIA-NEVADA INTERSTATE COMPACT HAS ALREADY PROVEN ITS VALUE AND CREDIBILITY BECAUSE IT HAS STOOD THE TEST OF TIME. WE COME BEFORE YOU TODAY SEEKING YOUR APPROVAL OF THE SAME DOCUMENT THAT WE ORIGINALLY BROUGHT TO YOU MORE THAN 15 YEARS AGO IN 1971. THE PARTIES TO THE ALLOCATION OF WATER STILL BELIEVE IT TO BE A FAIR AND EQUITABLE--AND I MIGHT ADD, NECESSARY--DISTRIBUTION OF SCARCE RESOURCES BETWEEN THE TWO STATES.

NEGOTIATIONS ON THE COMPACT WERE INITIATED BETWEEN THE TWO STATES IN 1955. THEY WERE FINALLY COMPLETED 16 YEARS LATER IN 1971. A TREMENDOUS AMOUNT OF VALUABLE TIME AND EFFORT WENT INTO DEVELOPING A FAIR AND EQUITABLE APPORTIONMENT OF WATER BETWEEN THE STATES. PLEASE TRY TO VISUALIZE THE MAGNITUDE OF THE FIGURES I AM GOING TO SUMMARIZE FOR YOU. I WOULD ASK THAT YOU PUT THEM INTO YOUR OWN PERSPECTIVE OF HOW MUCH TIME AND ENERGY YOU HAVE AVAILABLE TO INVEST IN THE MAJOR PIECES OF LEGISLATION UPON WHICH YOU WORK.

THE INTERSTATE COMPACT COMMISSIONS FROM CALIFORNIA AND NEVADA MET JOINTLY ON 62 SEPARATE OCCASIONS BETWEEN 1956 AND 1968 TO WORK ON DRAFTING THE COMPACT. OUR NEVADA COMMISSION MET ON ITS OWN AN ADDITIONAL 137 TIMES TO TAKE INPUT FROM OUR CITIZENS AND WORK OUT

OUR VIEWPOINTS. THE CALIFORNIA COMMISSION MET IN ITS OWN STATE ON 75 ADDITIONAL OCCASIONS.

SEVERAL SPECIAL COMMITTEES WERE ESTABLISHED TO CONSIDER PARTICULAR PROBLEMS. THE JOINT TRUCKEE RIVER COMMITTEE MET ON 22 OCCASIONS; THE JOINT CARSON RIVER COMMITTEE HELD 31 INDEPENDENT MEETINGS; THE JOINT WALKER RIVER COMMITTEE HELD 26 MEETINGS; THE JOINT LAKE TAHOE COMMITTEE MET ON 16 OCCASIONS. THE ENGINEERING-LEGAL COMMITTEE MET 20 TIMES, AND THE SPECIAL ENGINEERING COMMITTEE HELD EIGHT ADDITIONAL MEETINGS. SEPARATE SPECIAL COMMITTEES INCLUDED A DRAFTING COMMITTEE, A COMMITTEE TO EXPLAIN THE COMPACT TO INTERESTED PARTIES, COMMITTEES TO CONSIDER FEDERAL AGENCY COMMENTS, A DEFINITIONS COMMITTEE, A COMMITTEE ON ONE FACILITY--THE STAMPEDE DAM, AND A WATER RIGHTS COMMITTEE.

AGAIN, I WOULD ASK YOU TO PUT THE NUMBER OF HOURS INVESTED IN THESE MEETINGS INTO YOUR OWN LEGISLATIVE PERSPECTIVE IN ORDER TO REALIZE THE HUGE MAGNITUDE OF THE EFFORTS WHICH HAVE GONE INTO THE DRAFTING OF THIS BISTATE COMPACT.

VIRTUALLY EVERY SESSION SINCE 1971, THE NEVADA LEGISLATURE HAS ADOPTED A RESOLUTION REQUESTING THAT CONGRESS CONSIDER RATIFICATION OF THE COMPACT. WE BELIEVE THAT NOW IS THE TIME FOR YOUR RATIFICATION OF THE DOCUMENT IN WHICH SO MUCH TIME AND EFFORT HAS BEEN INVESTED. THE TWO STATES HAVE AVOIDED CONFLICT SO FAR, BUT YOUR "SIGNATURE" IS NECESSARY TO FINALIZE THE COMPACT AS THE "LAW-OF-THE-LAND" FOR ALLOCATION OF THE WATERS OF THESE RIVER SYSTEMS BETWEEN THE STATES.

THE PEOPLE OF MY DISTRICT NEED THE SECURITY OF THE RATIFIED COMPACT FOR THEIR PLANNING OF THE FUTURE. THEY NEED TO BE ABLE TO PROCEED WITH CONSIDERATION OF THE ONE SIGNIFICANT PROJECT FOR WHICH WATER RIGHTS ARE CERTIFIED, BUT WHICH HAS BEEN STYMIED BY THE LACK OF CERTAINTY ABOUT THE LEGAL STATUS OF WATER DISTRIBUTION BETWEEN THE STATES.

YOU SHOULD ALSO BE MADE AWARE OF ONE SPECIFIC SITUATION ON THE WALKER RIVER WHICH HAS CAUSED SOME MISUNDERSTANDING IN THE PAST. AT ONE TIME, A CONCERN WAS EXPRESSED BY THE WALKER RIVER INDIAN TRIBE AND MINERAL COUNTY, IN WHICH WALKER LAKE IS LOCATED. THESE PEOPLE FEARED THAT RATIFICATION OF THE COMPACT WOULD IN SOME WAY NEGATIVELY IMPACT WALKER LAKE.

HOWEVER, AS HAS BEEN EXPLAINED, THE COMPACT ONLY ALLOCATES WATER BETWEEN THE STATES. WATER DISTRIBUTION AND WATER RIGHTS FOR SPECIFIC USERS WILL BE HANDLED INDIVIDUALLY BY EACH STATE JUST AS THEY HAVE ALWAYS BEEN HANDLED. SPECIFICALLY RELATED TO WALKER LAKE, THE STATE OF NEVADA HAS APPROVED AN 8,000 CUBIT FOOT PER SECOND WATER RIGHT FOR THE LAKE. THIS RIGHT ALLOCATES ALL OF THE STORM FLOWS AND PREVIOUSLY UNALLOCATED RIGHTS TO THE LAKE. THE STATE OF NEVADA HAS DONE ALL THAT CAN BE DONE TO PRESERVE AND ENHANCE WALKER LAKE, AND RATIFICATION OF THE COMPACT WILL NOT AFFECT THE LAKE OR ITS WATER RIGHTS IN ANY WAY.

I WOULD, IN CLOSING, LIKE TO POINT OUT THAT I SIT ON THE WESTERN STATES WATER COUNCIL AND AM A MEMBER OF THE WATER POLICY COMMITTEE OF THE WESTERN CONFERENCE OF THE COUNCIL OF STATE GOVERNMENTS. THE INTERSTATE COMPACT WHICH YOU ARE CONSIDERING TODAY IS THE VERY TYPE OF COOPERATIVE EFFORT BETWEEN STATES WHICH BOTH OF THESE TWO ORGANIZATIONS HEARTILY ADVOCATE.

ONE OF MY COLLEAGUES IN THE NEVADA ASSEMBLY WILL ADDRESS SOME OF THE MISCONCEPTIONS WHICH HAVE BEEN ASSOCIATED WITH THE COMPACT, BUT I WOULD SIMPLY SOLICIT YOUR SUPPORT FOR THIS DOCUMENT WHICH HAS BEEN SO LABORIOUSLY DRAFTED AND WHICH HAS PROVEN ITS VALUE THROUGH THE TEST OF TIME.

Senator LAXALT. Thank you for an excellent statement.

May the record indicate the arrival of the Congresswoman from Nevada, Ms. Vucanovich.

If you would like, we would like to call you out of order. I know that you are terribly busy. Are you prepared to make your statement?

Ms. VUCANOVICH. I am, Mr. Chairman.

Senator LAXALT. Perhaps if you can induce Mr. Dini to yield his chair——

Ms. VUCANOVICH. I know he would love to do that.

Senator LAXALT. The record should also indicate the arrival of a member of the subcommittee, Senator DeConcini, our good neighbor from the south in Arizona.

Senator DECONCINI. Mr. Chairman, may I put a statement in the record?

Senator LAXALT. The Senator indicates that he has a statement which he wants filed for the record, and it will be so filed.

Senator DECONCINI. Thank you, Mr. Chairman.

Senator LAXALT. You are most welcome.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. DENNIS DECONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Mr. Chairman, I would like to commend you on scheduling a hearing on this legislation. The California-Nevada Interstate Water Compact is the result of years of negotiations and it is unfortunate that in the 15 years since its approval by the legislatures of both States there has been no hearing in Congress. Water is a vital resource to everyone affected by the compact, including the Indian tribes, the States, and the Federal Government. The need to resolve the use, conservation, and control of water within the Lake Tahoe, Truckee River, Carson River, and Walker River basins is well documented. I am looking forward to the testimony of the witnesses on this important subject.

Senator LAXALT. Will the Congresswoman proceed?

STATEMENT OF HON. BARBARA F. VUCANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Ms. VUCANOVICH. Thank you very much, Mr. Chairman. It is a pleasure for me to testify before you today on S. 2457, the California-Nevada compact. It is also a pleasure to testify in the company of so many distinguished Nevadans, and I would like to personally welcome all of them to Washington.

This piece of legislation is very important to the two States involved, and its passage is long overdue. As you are all well aware, the compact is a partial solution to a problem that has been festering for several years.

Legislation was drafted and hearings were held last year that addressed the full, comprehensive settlement. After hours of meetings and intricate negotiations, an agreement was reached between all parties. This agreement was sent to the tribe and a full tribal referendum was held. The vote turned down the agreement.

Several different approaches were taken to begin negotiations again. Unfortunately, this was to no avail.

S. 2457, the interstate compact, was introduced on May 15, 1986, by Senators Laxalt and Hecht, independent of the full, comprehensive settlement. The compact, although not the whole loaf of bread is a step in the right direction.

For 14 years, both States have abided by the water allocation agreement reached in 1969 and passed by the two State legislatures in 1971. It is now time for the U.S. Congress to ratify that agreement.

I want to make it absolutely clear to the committee that I am very sympathetic to the problems of the tribes and their concerns. I believe that those concerns can be adequately addressed by language in the committee report, and urge the committee to do whatever is necessary to ensure that those concerns are met.

This issue is very emotional. Any time you deal with the distribution of water rights, you can expect the controversies to be many and the emotions to run high. Precisely for this reason, it is time for this Congress to take the first step toward putting this matter to rest.

S. 2457 is of utmost importance to the State of Nevada. Nevada needs the assurance of favorable water allocation from the three rivers it shares with California. I believe the compact is a reasonable solution to begin solving the problems at hand. I urge its rapid passage and will do whatever I can to that end.

Thank you, Mr. Chairman.

Senator **Laxalt**. We thank the Congresswoman.

Does the Senator have any questions to address to the Congresswoman?

Senator **DeConcini**. I have no questions.

Ms. **Vucanovich**. Thank you very much.

Senator **Laxalt**. I might say to you, as I did to Congressman Reid, we hope on this side to process this with the greatest urgency. We have spent weeks, months, years attempting to bring this to a head, and we would like to conclude this very important piece of legislation, if at all possible, this year.

So I would exhort you, as I did the Congressman, to do all possible on the House side to await what we hope will be a timely passage on this side, so that we can conclude this very important piece of legislation this year.

Ms. **Vucanovich**. Thank you. Well, we will do the best we can on our side of the Hill.

Senator **Laxalt**. Very well. Thank you.

Ms. **Vucanovich**. Thank you.

Senator **Laxalt**. We will continue now with testimony from the panel. The next witness will be Assemblyman Bergevin from Douglas County.

STATEMENT OF LOUIS W. BERGEVIN

Mr. **Bergevin**. Thank you, Mr. Chairman, members of the committee. I am Nevada Assemblyman Louis W. Bergevin. I appreciate your consideration in allowing me to testify in support of the Nevada-California interstate compact

Assemblyman Dini, who just spoke to you, and I are from different political parties. We have disagreed on several major issues since I was first elected to the assembly in 1979. However, we are absolutely unified in our support of the Nevada-California interstate compact.

I speak to you today as chairman of Nevada's Legislative Commission, which performs our legislative duties in the year and a half interim between our regular legislative sessions. I am also chairman of the Assembly Committee on Governmental Affairs which processes matters related to biState compacts.

In my testimony today, I want to explain the major action accomplished through the compact. But more importantly, I want to clarify and emphasize what the compact does not do. The California-Nevada interstate compact was designed to apportion the water between the two States. It does not dictate nor affect the distribution of water rights within either State.

Thus, it does not address diversion or allocation of water between specific users. It does not affect existing decrees on the water systems, nor does it preclude anyone from asserting any valid claim for water or a water right within the respective State systems.

There has been misunderstanding on the basic points in the past. I would like to give a couple of examples to clarify and hopefully dispel these concerns.

I represent portions of the Lake Tahoe Basin, which is located on the State line between California and Nevada and is famous for its scenic beauty, as well as its recreation and economic potential.

We have never had a firm determination of water supply on which we could depend in the basin. As pressures for competing uses mount, it is imperative that we have a certified allocation of the water for use in the Tahoe Basin.

The California-Nevada interstate compact sets maximums and minimums for water apportioned to each State, thus protecting water for the residents of the Tahoe Basin and allocations for downstream users.

On the Carson River, we have been attempting to evaluate the feasibility of an upstream storage facility for years. We experienced major flooding in my district on the Carson River last year.

We have also lost the potential for efficient management of the limited water resource because we have been unable to assess realistically the potential for upstream storage. A final allocation of water between the States is crucial to stabilizing this situation so we can effectively plan for the future.

In one final example of a misunderstanding which has been voiced in the past, there are a few people who would contend that there are discrepancies between the California-Nevada interstate compact and the judicially approved water decrees, specifically the Alpine decree on the Carson River.

These people argue that administration of the bistate compact in its present form would affect the availability of Carson River water for the Newlands project at the lower end of the system, and consequently affect the availability of interconnected Truckee River water for the fishery in the lower reaches of the Truckee River and Pyramid Lake.

Article II, subparagraph A; article XVIII, subparagraphs C and D; and article VII, subparagraphs A, B and C of the compact clarify the jurisdiction for water allocations. These provisions specifically confirm the concept that the compact provides for a general allocation of water between the two States, not for any particular users.

Specific uses by individual parties are to be determined in accordance with each State's established procedures. The compact directly recognizes and protects the rights awarded through these State procedures, judicial decree, and other State or Federal law.

No one is precluded in any way from asserting a valid claim for water or a water right. Subparagraph A of article VI of the compact directly protects the interests of Pyramid Lake and the decreed water rights held by the Indians in that area.

In fact, this provision was included in the compact specifically to respond to the concerns of the Pyramid Lake Paiute Tribe that their decreed, first-priority right on the Truckee River might be affected.

I could provide additional testimony, but I know that your time is limited. In closing, I would reemphasize that as a rancher owning property in both California and Nevada on both the Carson and the Walker Rivers, and as a representative of the people of Nevada, I urge your understanding of the true content of this compact and your support for its ratification.

It is important that this vital interstate matter finally be stabilized so that the people of California and Nevada can proceed with a certainty of the interstate allocations.

Thank you for your time.

Senator LAXALT. We thank you, assemblyman.

Does the Senator have any questions?

Senator DECONCINI. Mr. Chairman, I have some general questions, but has all the panel testified now?

Senator LAXALT. No; we need a couple more. Would you prefer to wait?

Senator DECONCINI. I will wait and do it at that time, if they are still going to be here.

Senator LAXALT. Very well.

We will now proceed with Mr. Kennedy.

STATEMENT OF DAVID N. KENNEDY

Mr. KENNEDY. Thank you, Mr. Chairman. I am David Kennedy. I am the director of the Department of Water Resources of the State of California. I have a prepared statement which I would like to file with the committee. I will not read it, in the interests of time.

Senator LAXALT. It will be so filed. You may summarize now.

Mr. KENNEDY. Yes; I would like to make a few comments. There are two basic reasons that California wishes to see the compact approved. One is that we need it for the certainty of administration of water rights within the State.

We are approaching the limit of the amount of water that we have been allocated under the compact and we have a number of users within the State that are in an uncertain position with respect to their rights. California's State Water Resources Control Board—which has permit jurisdiction over surface appropriations of water—needs to know just what the allocation is.

The second problem we have is that in the last several years, entities from Nevada have started coveting additional waters from

California, as you are aware. Those in the Reno-Sparks area will be short of water soon, and they are looking at several California sources of supply. Of course, the Pyramid Lake Tribe has sued us in Federal court to try and get additional water from California.

We feel that we are now in a position where we must get the compact approved just to protect what we have.

As I read the testimony last night of others who are going to testify before you, including many of those in opposition, I was impressed by the fact that this is just like many other water rights disputes that I have been involved in for many years.

There are an awful lot of things said that do not seem to fit with the facts as I understand them. There are a great many accusations made against the compact that, in my mind, have nothing to do with the compact. They are internal disputes within Nevada.

There is one central point that I think California wants to come back to again and again. While the Truckee River has been the point of most controversy, California receives less than 10 percent of the water of the Lake Tahoe-Truckee River system. Whatever problems need to be solved within Nevada, should not be solved with California's water.

This was recognized at the time that the compact was negotiated. The State of Nevada has been very clear that California needed to have an absolutely firm entitlement, since it was receiving such a small amount. That is why it troubles us very much now to see some of the users within Nevada entities looking at this water.

The Pyramid Lake problem is very difficult. I think that the tribe would certainly agree that there has been much sympathy within California for trying to solve that problem. We would continue to try and work with the tribe and others in whatever steps are appropriate to solve that problem; but not with the water allocated to California.

I noticed a comment that Secretary Udall made in a letter that I ran across last night in some of the testimony. I certainly do not want to represent that Secretary Udall supports this, but he acknowledged that the California share of water of the Truckee River was too small to really have any impact on the Pyramid Lake issue.

For a long time, that was the assumption of most parties. Now, we find ourselves in this unfortunate situation where the tribe is going after our unused water.

One other point I would like to make is with respect to the United States. There has been a lot of comment made as to why the United States should be bound to the compact's allocations. There have been a lot of statements made about sovereignty and some rather troublesome comments.

The thing that strikes us about this is that California is really the one under threat by these attempts to keep the United States outside this compact. I am not aware of any Federal use within California that is looking to Nevada water, but there is no question that there are Federal uses within Nevada that are thinking about using California water.

We think that without having the Federal Government bound by this compact, it is really a meaningless document; it does not do what it is intended to do.

Again, we would certainly look forward to working with you and other members of the Congress on resolving the Pyramid Lake issue, but we think the first step is to get this compact approved and we urge the approval of your bill, Senator.

Thank you.

[The prepared statement and responses to written questions follow:]

PREPARED STATEMENT OF DAVID N. KENNEDY

I. INTRODUCTION

Mr. Chairman, and members of the Committee, my name is David Kennedy. I am the Director of the Department of Water Resources, of the State of California.

The California Legislature has designated the Department of Water Resources as the representative of the State of California for the purposes of administration of interstate compacts, including the California-Nevada Interstate Compact, which is the subject of this hearing. Among its other responsibilities, the Department of Water Resources is responsible for investigating and planning for use of water within California, in cooperation with the State Water Resources Control Board (State Water Board) which administers California's water rights and water quality laws.
Mr. W. Don Maughan, Chairman of the State Water Board, concurs in the position on S. 2457 set forth in this testimony.

S. 2457 would provide for the consent and approval of Congress to the California-Nevada Interstate Compact. California supports the Compact and wishes to see it become effective. The Compact is the product of nearly 13 years of negotiations between the states, between 1955 and 1968. It was ratified by the Legislatures of California and Nevada in 1970 and 1971, respectively. The Compact makes an equitable apportionment of the waters of the Lake Tahoe Basin and the Truckee, Carson, and Walker River Basins to the two states. In the Tahoe and Truckee Basins, California is allocated approximately 10 percent of the total flow of the Truckee River. A portion of the allocation would not be consumed but would be available to Nevada users as return flow. During the almost 15 years that the Compact has been awaiting congressional approval, California has voluntarily complied with the Compact allocations, but many of the important water rights decisions have been deferred by the State Water Board because of the uncertainty that exists through an absence of an effective Compact, and litigation fostered by its absence. California needs the assurance which the Compact would provide for its administration of water rights for these important waters.

The Compact was intended to resolve many of the problems arising from increasing use within each state of a limited, common water supply. California faces increasing demands within Nevada for this common water supply. Certain of our California border counties have expressed concern that their present and future uses of water may be threatened by this increasing demand. The Compact should be allowed to take effect without further delay, to establish certainty for allocation decisions which must be made within the State of California.

II. HISTORY AND PROVISIONS OF THE COMPACT

After many years of informal discussion, in 1955, the States of California and Nevada decided to negotiate an interstate compact to provide an equitable apportionment of their interstate waters. The states recognized that this was required to avoid future controversies as demands increased in both states for the use of the very limited water supplies. The controversies first started to develop in the 1940's when the principal water using agencies in Nevada began increasingly to protest applications for water rights permits within California. In these interstate basins, the states wished to recognize existing water rights and to address new uses of water. The states determined that entering into an interstate compact was the best way to resolve immediate problems and provide a basis for orderly resolution of future controversies. The governor of each state appointed a commission which met jointly for 13 years to negotiate the Compact. President Eisenhower appointed a federal representative who chaired the joint meetings.

The Compact allocates sufficient water to each state to provide for decreed rights and existing beneficial uses, together with additional amounts deemed equitable within each of the basins. These waters are allocated to each state and not to individual users. Each state has jurisdiction to allocate under its own laws the rights to beneficial use of water within limits set by the Compact.

In the Lake Tahoe Basin, where an average of about 140,000 acre-feet of water annually flows from the lake into Truckee River, 34,000 acre-feet per year is reserved for present and future use with the Basin; 23,000 acre-feet per year of this is allocated for use in California and 11,000 acre-feet per year is allocated to Nevada. This is in about the same ratio as the acreage of land within each state in the Basin. The compact allocations include all diversions from surface and ground waters.

Approximately 485,000 acre-feet annually flows from the Truckee River Basin's upstream area in California--including the Lake Tahoe Basin--into Nevada. Of this flow, a right to divert 10,000 acre-feet annually of water is allocated to California. In addition, 6,000 acre-feet of conservation yield of the Bureau of Reclamation's Stampede Reservoir is allocated to California, upon execution of a contract between the State of California and the United States. Additional yield of up to 10,000 acre-feet annually may be developed for possible domestic, municipal and industrial uses when the other allocations are used. Also, the Compact recognizes the amount of water decreed to the Sierra Valley. The remainder is allocated to Nevada.

In the Carson River Basin, approximately 300,000 acre-feet of water annually now enters Nevada from California. The Compact allocates water to California from the East Fork and West Fork Carson River for non-irrigation uses and for direct irrigation use for irrigable lands at specified duties of water. The Carson River allocation also recognizes certain reservoir storage rights. Additional yields from the Carson River are allocated 20 percent to California and 80 percent to Nevada.

In the Walker River Basin, another 300,000 acre-feet of water per year on the average flows from the upstream watershed in California into Nevada. The Compact recognizes and confirms the decree in United States vs. Walker River Irrigation District, et al. In addition, the Compact makes certain allocations to Nevada for use of the Walker River Indian Reservation and rights for California to divert from the West Walker River when Topaz Reservior is storing water. The unused waters of the Walker River are allocated 35 percent to California and 65 percent to Nevada.

In addition to the allocation of quantities of water, the Compact contains provisions which: (1) establish a permanent commission to administer the terms of the Compact; (2) recognize the use of water for the preservation, protection and enhancement of fish, wildlife, and recreation; (3) permit the change of manner, purpose, or place of use of the allocated water; and (4) cover other factors deemed necesary to insure each state its equitable share of a common water supply.

III. ADMINISTRATION OF WATER RIGHTS IN THE LAKE TAHOE BASIN: AN EXAMPLE OF NEED FOR THE COMPACT

In the Lake Tahoe Basin, the surface and ground water systems are interconnected and the Compact allocations include all diversions from all sources, surface and underground, within the Basin. Under California law, the State Water Board has permit jurisdiction over certain surface appropriations only. No State permit is required for extractions and use of ground water, riparian diversions, and surface appropriations initiated prior to 1914.

Following adoption of the Compact by the California Legislature in 1970, the State Water Board formulated a policy for administration of water rights in the Lake Tahoe Basin. The policy was adopted by the Board on March 16, 1972. The purpose of this policy, together with the State Water Board's ongoing analysis and policy evaluation, is to assure that California will stay within the Compact's Lake Tahoe allocation.

The policy limits issuance of new water rights permits so that their face value, together with all other uses of water, including ground water, does not exceed 23,000 acre-feet per year. Permit applications will not be approved when total uses will be in excess of this amount. The policy also places restrictions on the initial time to put water to beneficial uses under a permit and the amount of extension of this time that may be granted.

Simply stated, the Board's Tahoe policy has implemented the Compact. This policy has always been considered a necessary interim arrangement. Ultimately, the State Water Board must act on the pending applications, but it must do so with the certainty of an equitable apportionment of those interstate waters. Although an equitable apportionment could be achieved ultimately through protracted and costly litigation, the Compact, as adopted by the Legislatures of both states, represents a more orderly and reasonable apportionment of these waters. As the demand for water increases, the need for certainty becomes more urgent; the consent of Congress is needed now.

IV. SPECIFIC COMMENTS ON THE COMPACT

(1) Compact Allocations Binding on United States

In view of the past and present controversy concerning the Compact's potential impact on Pyramid Lake, it is important to note that the Compact effects a division of waters between two states, but it does not allocate water to individual users within either state. The Compact recognizes existing water rights, divides waters in excess of these rights to each state in proportion to its anticipated need, and provides that uses of water by the United States are charged as a use against the state in which the use occurs. This provision is vital to California, because California is allocated only approximately 10 percent of the Truckee River flows, and the United States is a major downstream user on the Truckee and Carson Rivers. The United States also controls the storage of water in Lake Tahoe.

While federal uses would be charged to each state's allocation, it is important to note that the United States would not be bound to any particular use, but only to the allocations of water between the two states. Because the United States controls so much water, its failure to agree to the allocation of water as between the two states would make the allocations relatively meaningless. If the United States did not consent to be bound, neither state could plan or develop its respective waters, or administer its water rights laws with any degree of certainty.

It should be noted that in its present form S. 2457 fails to provide the necessary consent to bind the United States to the Compact's allocations, as required by Article XXII (3). This consent is a condition which must be met before the Compact can become effective. S. 2457 should be amended to provide this necessary consent.

(2) Participation of the Pyramid Lake Paiute Tribe at Compact Negotiations

The Pyramid Lake Paiute Tribe (Tribe) has contended that it was not represented by itself or by the United States at the negotiations leading up to the Compact. It is true that the Tribe did not have a representative named to the Nevada Commission that negotiated the Compact. However, the Tribe did have representatives or its attorney present at 26 of the 62 meetings of the Joint California-Nevada Interstate Commission. Furthermore, several representatives of the Bureau of Indian Affairs were present at 56 of the 62 meetings. At the time, California negotiators believed that the Tribe was represented by several entities. Substantial opposition by the Tribe and the United States did not develop until the Compact was pending before the California Legislature. During the negotiations the objections of the United States were not communicated to the negotiators, in spite of the fact that a representative of the United States chaired the joint meetings, and other federal representatives attended the meetings.

The Tribe received a hearing before the California Legislature in 1969. Article VI (B)(4)(b) and Article XVIII (C) were added to the Compact by the California Legislature largely in response to the Tribe's objections. Article VI (B)(4)(b) limits California's right to develop an additional 10,000 acre-feet annually for domestic, municipal and industrial uses if and when the initial 10,000 acre-foot allocation and the 6,000 acre-foot Stampede Reservoir reservation is being used or such use appears imminent.

Article XVIII (c) provides that nothing in the Compact shall limit any claim to the use of water in either state which could have been made if the Compact were not adopted, so long as the place of use limitations for water from each basin are satisfied. The committee report on interim hearings in 1969, by the Assembly Committee on Water, shows that the committee specifically considered the Tribe's objections at the time it recommended that the California Legislature ratify the Compact with the two revisions cited above.

(3) The Compact is not Mandatory

Much of the criticism of the Compact is based on speculation that events it authorizes will occur. However, the Compact, for the most part, establishes limitations but does not require maximum uses. Beyond that, it is analogous to a planning document. For example, the Tribe assumes that immediately after the Compact becomes effective California would demand a contract from the Secretary of Interior for its 6,000 acre-foot allocation from Stampede Reservoir. The Compact establishes an allocation from Stampede Reservoir, subject to the execution of a contract with the United States; it does not compel use of this allocation. We are concerned about maintaining that allocation because California receives a very small percentage of the interstate waters arising within our State, and certain of our border counties have regarded the Stampede allocation as a cushion, when and if needed.

However, we have no present plans to seek a contract for the water. We would consider doing so only when evidence of need is presented, or until the United States seeks repayment contracts.

V. CALIFORNIA'S SUPPORT OF S. 1558

Since the Compact was ratified, several changes have occurred to the operation of the Truckee River System which have increased Pyramid Lake's water supply and made some improvements to the fishery. These include the United States' Operating Criteria and Principles for the Newlands Project, the construction of Marble Bluff Dam and Fishway, and the United States' operation of Stampede Reservoir for the Lake's fishery.

Other improvements were considered in negotiations which culminated in S. 1558--a bill introduced last year to settle certain claims of the Pyramid Lake Paiute Tribe of Indians, and for other purposes. The California Department of Water Resources did not participate directly in these negotiations but California supported S. 1558 principally because it would have provided for the consent of Congress to the Compact as a part of an overall program to protect the Pyramid Lake fishery and settle outstanding lawsuits involving use of Truckee River waters, including the Pyramid Lake Paiute Tribe's suit against California. Our statement of support, however, made it clear that the principal benefit to California from that legislation was the expectation that the Compact would become effective, after certain conditions were satisfied. While California still believes that the resources of Pyramid Lake are of national interest, and efforts to assure the preservation of the lake and its fishery should continue, we believe that the Compact should not be delayed for further efforts to resolve the Pyramid Lake problem. The Pyramid Lake problems can and should be resolved between the Tribe, the United States, and Nevada interests. The small amount of water allocated to California under the Compact would not contribute substantially to resolution of these problems.

Similarly, we doubt that the Compact mandates perpetual adherence to the "Floriston Rates". In fact, the Compact contains a mechanism that could be used to modify the Floriston Rates. It is Article XII, which allows the

Commission to plan for the coordination of reservoirs and for change in the operating procedures of willing reservoir owners.

VI. CONCLUSION

It is important to note that uses of water within California have not significantly contributed to the problems at Pyramid Lake. Major diversions by the United States and other users within the State of Nevada account for most of the historic losses of water to the lake. Consideration should be given to further refinement of federal project operation and other physical solutions to provide improved spawning for the Pyramid Lake fishery. These solutions should be worked out between the United States, the Tribe, and other affected Nevada interests. Within the framework of the Compact's allocations California stands ready to support any reasonable legislative proposal or operating criteria which will resolve the problem. However, we will not make a physical solution a precondition to our support for the Compact. The water allocated to California for Lake Tahoe and the Truckee River Basin is approximately 10 percent of the water flowing in the Truckee River across the state line and only a portion of that will be consumed. I believe that it represents a very conservative apportionment for California's present and future needs in the region.

California has operated under, and complied with, the Compact's allocations since it was ratified by the legislatures of both states. The State Water Board has utilized the Compact's allocations in the formulation of its plans and policies for water use in the Lake Tahoe Basin. This compliance has demonstrated California's intent to live within that allocation. The alternative to the Compact may be lengthy and protracted litigation which may not be in the interests of either State.

On behalf of the State of California, I respectfully urge your favorable consideration of S. 2457 to effect the negotiated division of waters between California and Nevada.

STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
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(916) 445-9248

AUG 01 1986

Senator Orrin G. Hatch, Chairman
Subcommittee on the Constitution
United States Senate Committee on the Judiciary
Washington, DC 10510

Dear Senator Hatch:

California-Nevada Interstate Compact

I am pleased to provide the responses of the State of California, Department of Water Resources, to the questions attached to your letter of July 16, 1986. The questions concern issues raised during the July 15 hearings on the California-Nevada Interstate Compact. Our responses are attached.

We have coordinated our responses with the State of Nevada. In some places, we have referred to the responses of the State of Nevada because of their officials' long-standing familiarity with the Compact and their participation throughout the negotiations.

At the July 15 hearing, the United States offered a "savings clause" as a suggested amendment to S. 2457. This proposed clause would exempt the United States and Indian tribes from many of the Compact's important requirements and it would introduce substantial uncertainties to the small allocations made to the State of California. I have also attached a copy of a letter to Senator Laxalt expressing our concerns over such a "savings clause."

If you need further information or would like to discuss this further, please call me at (916) 445-6582 or have your staff call John Kramer at (916) 445-9951.

Sincerely,

Robert E Whiting
for David N. Kennedy
Director

Enclosure

cc: Roland Westergard, Director
Nevada Department of Conservation
and National Resources
201 South Fall Street
Carson City, NV 89710

RESPONSES OF THE STATE OF CALIFORNIA
TO
QUESTIONS CONCERNING THE
CALIFORNIA-NEVADA INTERSTATE COMPACT
PROPOUNDED BY
SENATOR HATCH AND SENATOR DECONCINI

Part I

Questions to Representatives of California and Nevada Concerning Meaning of the Compact and its Impact on the United States and Indian Tribes

Question No. 1: Has the California-Nevada Compact Commission ever authorized its representatives to enter into negotiations with the United States or the affected Indian tribes over the disputed provisions of the Compact? If so, when? And what happened? Provide documentation.

Response: As noted in California's testimony before the Subcommittee on the Constitution, the Joint California-Nevada Compact Commisison meetings were chaired by a federal representative appointed by the President of the United States; the United States Solicitor's Office, and representatives of the Bureau of Indian Affairs were present at most meetings of the Joint Commission. Representatives of the Indian Tribes were also present at certain meetings. Following adoption of the Compact, representatives of the Pyramid Lake Paiute Tribe of Indians appeared before committee hearings of the California Legislature.

We are not aware of independent negotiations between representatives of the United States or Indian Tribes and members of the State of California's California-Nevada Interstate Compact Commission. The California Commission was abolished on January 1, 1977.

California representatives did not participate in negotiations leading to the introduction of S. 1558, but California supported that bill.

On October 22, 1985, staff of the California Department of Water Resources and the State Water Resources Control Board met with the attorney and engineers of the Pyramid Lake Paiute Tribe at their request. At that meeting the Tribe proposed that the State of California and the Tribe undertake independent bilateral negotiations for California water allocations and operating criteria for the Truckee River. After considering this proposal, staff from the Department and the State Board notified the Tribe's attorney that California supports ratification of the Compact and believed that independent bilateral negotiations over waters of the Tahoe-Truckee system at that time were not appropriate.

Question No. 2: Describe in detail all the official comments, proposals and recommendations submitted by federal agencies on the draft 1965 Compact which were not fully agreed to by the States and are not incorporated in the Compact that was adopted by the two States in 1970 and 1971.

Response: We understand that Mr. Roland Westergard's response to this question has provided the documentation requested.

Question No. 3: What is the effect of Article III(A) not being made binding on the United States and Indian tribes in light of Articles XXI and XXII?

Response: The intent of Article III(A) is to preserve to each State the intrastate jurisdiction to determine rights to the use of that water allocated by the Compact to each State. This jurisdiction is made subject (1) to the western water law principle that use of water must be reasonable and non-wasteful, and (2) to the duty of each State to accept, pursuant to its water right laws, applications to use water made in order to utilize water allocated by the Compact to the other State. The only reference to the United States is the last sentence of Article III(A). This sentence provides that the preceeding applications provisions shall neither require the United States to comply with State law relating to the appropriation of water nor prohibit the United States from complying with State law relating to the appropriation of water, insofar as the intrastate allocations are concerned.

At the time the Compact was negotiated and adopted by the two States, the duty of the United States to comply with State law relating to the appropriation of water -- especially with Section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 USCA §§ 372, 383) -- was not clear. (That duty has subsequently been clarified, insofar as Section 8 of the Reclamation Law is concerned, by the United States Supreme Court in *State of California v. United States of America* (1978) 438 U.S. 645. The final sentence of Article III(A) was intended to preserve the position of the United States on the compliance issue. As such, it provides the United States with an immunity, i.e., a benefit. The Article was not made "binding" on the United States by Article XXII or by any reference in Article XXI because it is illogical to "bind" a party to a benefit. Logically, "binding" references are necessary only as to duties and obligations, not to benefits.

Question No. 4: What is the effect of Article III(C) not being made binding on the United States and Indian tribes in the light of Articles XXI and XXII?

Response: Article III(C) provides that use of water by the United States shall be charged as a use by the state in which the use is made. Article XXII requires that the United States be bound to specified allocations of water to the States of California and Nevada. Article III(C) is, subsumed in Article XXII because the enumerated allocations include those waters substantially affected by federal operations or reserved water rights claims.

By being bound, for example, to the allocation to California of 23,000 acre feet per year within the Tahoe Basin, the United States would not be able to claim water in a manner which would diminish the amount available for use within the California side of the Basin. Article XXI makes it clear that federal rights to, or powers over use of water within the Tahoe Basin would not be affected by the Compact. Article III(C) would require California to include federal uses in the Tahoe Basin in calculating the water available for use under its allocation.

Question No. 5: What is the effect of Article XVIII(C) not being made binding on the United States and Indian tribes in light of Articles XXI and XXII?

Response: The California Legislature added Article XVIII(C) to the Compact as presented by the bi-state negotiating Commission. It was added in response to an appearance by the Pyramid Lake Paiute Tribe of Indians before the committee of the California Legislature which conducted a hearing on the adoption measure. It was then accepted by the Nevada Legislature when in 1971 Nevada re-adopted the Compact identical to the Compact adopted by the California Legislature. Again, Article XVIII(C) provides an *immunity* against a Compact interpretation as abridging claims of right -- including claims of the United States -- in either State, within the allocations to each State. As noted above, an immunity is a benefit, and it would have been illogical to apply the "binding" provisions of Articles XXI or XXII to other Compact provisions which provide a benefit.

Question No. 6: What is your view of the apparent conflict between Articles III(A) and XVIII(C) in that Article III(A) provides that state law shall determine the rights to the use of the waters allocated to each state whereas Article XVIII(C) purports to protect water rights under either state or federal laws?

Response: No conflict exists. First, insofar as claims of right based on federal law are concerned, Article XVIII(C) recognizes the validity of such federal law claims. For example, federal reserved right claims are claims of right origined in federal law, not state law: Article XVIII(C) protects such claims.

Second, the question may confuse the distinction between state jurisdiction to determine rights with the doctrinal basis of rights, which may lie both in state and federal law. To illustrate this distinction, under the so-called McCarran Amendment (66 Stat. 549, § 208; 43 USCA § 666), the states may determine federal reserved rights in general adjudications pursuant to state procedures, together with claims of right origined in state law doctrines. For example, California, pursuant to its statutory general adjudication procedure, determines all rights, regardless of the doctrinal origin (see California Water Code Section 2501); California routinely determines federal reserved rights in such proceedings.

Finally, Article III(A) makes it clear that within the compact's interstate allocations intrastate water rights will be determined pursuant to each State's law.

Question No. 7: Explain the relationship between Articles III(a), which makes Nevada law applicable to the determination of all rights to the use of water within Nevada, and Article XVIII(C), which protects the rights of anyone to use water within the allocations made to the states under either state or federal laws.

Response: This question calls for an interpretation of Nevada law, which we understand has been provided by Mr. Westergard.

Question No. 8: Explain the relationship between Articles III(A) and XVIII(C) as applied to the United States and Pyramid Lake Indian tribe in light of Articles XXI and XXII and the fact that neither Articles III(A) nor XVIII(C) are made binding on the United States and Indian tribes.

Response: This question is a variation on earlier questions and the response will elaborate on earlier answers. First, as pointed out above, the state jurisdiction provision in Article III(A) relates to determination of rights, not to their doctrinal origin in state or federal law; as such, it is essentially procedural and speaks to the question of forum. Since it is not made binding on the United States by Article XXII or by any implication in Article XXI, the conclusion is that the United States and the Indian tribes are not bound to state forums for determination of rights by Article III(A). Also as noted above, however, other provisions of federal law -- e.g., the McCarran Amendment -- may result in utilization of state forums to determine such rights.

Second, as previously noted, to the extent that Article XVIII(C) grants an immunity to any abridgment of claims of right origined in federal law, it would be illogical to "bind" the beneficiary of such an immunity.

Part II

Questions to Representatives of Nevada, California, and the Federal Government Concerning Specific Compact Provisions

Question No. 1: Describe in detail precisely what rights of the United States are ratified and confirmed by virtue of Article V(A)? To what degree, if at all, does Article V(A) ratify and confirm the Floriston Rates as set forth in either the Truckee River Agreement or the Decree in United States v. Truckee River General Electric Company?

Response: Article V(A) ratifies and confirms the right of the United States to store water in Lake Tahoe between the natural outlet elevation of the Lake and an elevation of 6,229.1 feet (Lake Tahoe datum), a depth of 6.1 feet. The Compact is silent as to the Floriston Rates, the required flow of water past the state line, as specified in the documents cited.

Question No. 2: What is the practical and legal effect of Article V(A) not being made binding on the United States and Indian tribes?

Response: Article V(A) relates only to the storage of water in Lake Tahoe. This confirms the United States' authority to regulate the levels in Lake Tahoe. There is no logical reason to "bind" the United States to a provision that confirms its authority.

Question No. 3: Describe in detail the transbasin diversions from the Lake Tahoe Basin that may be continued under Article V(E) and the amount of water involved in each such transbasin diversion.

Response: Only one transbasin diversion on the California side of the Basin is authorized under Article V(E). The Pacific Gas and Electric Company is entitled to continue a long established 2000 acre-foot annual diversion from Echo Lake, a tributary of Lake Tahoe, into the South Fork American River.

Question No. 4: Isn't it necessary to substantially revise or eliminate Article VII from the Compact in light of the subsequent entry of the Final Decree in the Alpine case in 1980? If not, why not?

Response: No. The purpose of Article VII of the Compact is to divide the waters of the Carson River between the states of California and Nevada. As noted in our responses to the questions in Part I, except for the Compact's allocations to the two states, specific individual uses of water are to be determined under state or federal law, whichever is applicable. This would include individual uses as established under the Alpine decree; the decree is the measure of intrastate uses to which it applies.

Specific provisions in Article VII of the Compact make it clear that its purpose is to allocate water to each state. Artice VII(A), (B) and (C) begin with the phrase "There is allocated". Artice VII(D) is an allocation of the yields of Washoe Act projects or other projects, if built, to the two states.

The relationship of the Alpine decree to the Compact is illustrated by the Compact's allocation of a 2,000 acre-foot per year storage right within Alpine County (Article VII(A)(3)). The Alpine decree does not specifically recognize this storage right, but in its rulings on specific objections to Special Master's findings on acreages and priorities, the court quoted Article VII(A)(3) and noted that the Compact was not yet ratified. The ruling notes that: "Once the Compact has been ratified by Congress, there will be a basis to assert that claim. When or if that time comes the Court will rule on the validity of the 'allowance'." The Alpine allowance will become effective when and if approved by the court. There is no conflict between the decree and the Compact's allocations under Article VII.

Question No. 5: What is the relationship between Article VII of the Compact and the 1980 Final Decree in the Carson River water rights adjudication, United States v. Alpine Land & Reservoir Co.?

Response: See the answer to Question No. 4 above.

Question No. 6: What is the effect of the allocations in Article VII, insofar as those allocations provide greater amounts of water than the 1980 Final Decree in the Carson River adjudication, United States v. Alpine Land & Reservoir Co.?

Response: The duties of water in Article VII were negotiated for the purpose of providing an allocation to each state. They were negotiated to provide a framework for an allocation, and as made clear by Articles III and XVIII (C) and (D), they were not intended to define individual intrastate rights to use of water. These intrastate rights, including duty of water, are defined and governed by the Alpine decree. As noted in our responses to the questions in Part I, state law recognizes rights established under federal law.

Question No. 7: What are the respective powers and duties of the federal court and the federal Water Master to administer and enforce the 1980 Alpine decree and of the Compact Commission to administer and enforce Article VII of the Compact?

Response: The Compact Commission's responsibilities would involve supervision of the allocations to each state. Uses of water within each state would be supervised by the federal Water Master, to the extent that those uses are defined in the Alpine decree. Rights not defined by the Alpine decree would be governed by state law within the Compact's allocations.

Question No. 8: Why are existing beneficial uses of water for fish, wildlife and recreational purposes in Nevada omitted from Artice VI(b)(4)(a) when all other existing beneficial uses are protected?

Response: The Compact requires that the United States be bound to specified allocations to each state. It was recognized that water for Pyramid Lake should come out of water allocated to the State of Nevada. It was believed that if flows for Pyramid Lake were given priority over the allocation made by Article VI(B)(4)(a) there would be no further water available for California when the allocations provided in Articles VI(B)(1) and (B)(3) were being used.

Part III

Questions to Representatives of California and the United States Regarding Specific Compact Provisions

Question No. 1: What is the relationship between the 6,000 acre feet allocation of Stampede water to California under Article VI(B)(3) and the obligations of the Secretary of the Interior under the Endangered Species Act?

Response: The United States Court of Appeals has held in Carson-Truckee Conservancy District v. Clark that the Secretary of the Interior was obligated under the Endangered Species Act to give priority to conserving the threatened and endangered species in Pyramid Lake. Article VI(B)(3) conditions California's Stampede Reservoir allocation on executing a contract with the United States. We assume that in operating Stampede Reservoir and executing such a contract the Secretary of Interior will comply with all applicable laws and regulations.

Question No. 2: How, if at all, would or could the current operation of Stampede Reservoir be affected by Article VI(B)(3)?

Response: See Question No. 1.

Question No. 3: How much water allocated to California under Article V(D) is currently appropriated and being used?

Response: The staff of the State Water Resources Control Board has estimated that uses as of 1982, including groundwater and riparian rights are approximately 16,000 acre-feet annually. The total of permitted applications, pending applications and other rights exceeds California's allocation of 23,000 acre-feet annually. The 1982 estimates of use probably have not changed significantly because of the moratorium on construction in the Lake Tahoe Basin which has been in effect for about three years.

Question No. 4: How much of the water allocated to California under Article VI(B)(1) is currently appropriated and being used?

Response: The records of the State Water Resources Control Board, the agency responsible for the administration of water rights, show that approximately 7850 acre-feet annually is appropriated. However, it should be noted that the records may not be complete with regard to riparian rights and pre-1914 appropriative rights as the Board has jurisdiction only over post-1914 appropriative rights.

Question No. 5: How much, if any, of the water allocated to California under Article VI(B)(4) is currently appropriated and being used?

Response: None.

Question No. 6: How much, if any, of the water allocated to California in Article V(D) is now being exported out of the Lake ~~Tahoe~~ Basin or reused prior to its return to Lake Tahoe?

Response: Approximately 10,000 acre-feet per year of sewage effluent is exported from the California side of the Lake Tahoe Basin. This export is made to comply with the applicable requirements of state and federal law.

Question No. 7: How much, if any, of the water described in the answer to the previous question is encompassed in the allocation under Article V(E)?

Response: None.

Question No. 8: Are there any current applications for the export of water from the Lake Tahoe Basin in California?

Response: No.

Question No. 9: Are there any current applications for the reuse of water in the Lake Tahoe Basin in California before such water returns to the Lake?

Response: No.

Question No. 10: Do you know of any plans for the export of water from, or the reuse of water in, the Lake Tahoe Basin in California as authorized in Article V(D)?

Response: No.

Question No. 11: What plan or ideas, if any, does California have or has California considered for utilizing the allocation authorized in Article VI(B)(4)?

Response: The State of California has no plans or proposals at the present time to develop the additional yields allocated in Article VI(B)(4).

Question No. 12: Approximately how much additional storage capacity would be required to develop the full 10,000 acre-feet allocated annually under Article VI(B)(4) to enable the full use of that annual allocation under sustained drought conditions?

Response: Hypothetical storage capacity to develop the full 10,000 acre-feet allocation would be extremely difficult to calculate, because it would depend on the number of reservoirs proposed, their location, downstream flow requirements for instream beneficial uses, water rights in Nevada and other factors that may affect total storage capacity. As the allocations to California under Article VI(B)(1) and Article VI (B)(3) are not fully used, and such use does not appear imminent, no study has been made.

Part V

Questions to the Representatives of California and Nevada Regarding Compact Negotiations

Question No. 1: Describe the past and composition of the Nevada (or California) Compact Commission.

Response: The California-Nevada Interstate Compact Commission which represented the State of California was created by Legislation enacted in 1955 (Stats. 1955, Chapter 1810, now codified in California Government Code, sections 8130-8140). The Commission consisted of seven members. The Director of the California Department of Water Resources served as an ex officio member. Six members were appointed by the Governor. These six members had to be owners of property or engaged in business in the areas comprising the Lake Tahoe Basin and the Truckee, Carson and Walker River Basins. One member was appointed from Sierra or

Nevada County; one from Placer County; one from El Dorado County; one from Alpine County; one from Mono County; and one residing anywhere in the State who represented the Lake Tahoe area.

The California Commission was abolished by operation of law on January 1, 1977.

Question No. 2: How were the members of the Commission selected? Who appointed them? Were any specific interests represented? If so, which ones and at what times? How were the representatives of those interests selected?

Response: See Answer No. 1 above. The initial members of the Commission included: Colonel A. M. Barton, Chairman (statewide representative, Lake Tahoe); Hubert Bruns (Alpine County); Harvey Banks, State Engineer (ex officio member); Ray Charlebois (Mono County); Frank Rahback (El Dorado County); Cecil Edmunds (Nevada County); William Bechdolt (Placer County).

George Kehlet (El Dorado County) replaced Frank Rahbeck in 1959. W. E. Warne, Director, Department of Water Resources (ex officio), replaced Harvey Banks in 1961, Henry G. Loehr (Nevada County) replaced Cecil Edmunds in 1963. Fred Hodder (Nevada County) replaced Henry G. Loehr in 1966. In 1967, William Gianelli, Director, Department of Water Resources (ex officio), replaced W. E. Warne; Ralph Dewante (Lake Tahoe) replaced Colonel Barton, and Charles Fogerty (El Dorado County) replaced George Kehlet. In 1967, Hubert Bruns was appointed Chairman upon the death of Colonel Barton.

Question No. 3: How did the Nevada (or California) Compact Commission conduct business? Were the affirmative votes of both State Commissions required in order for the Joint Commission to act? Did the State Commissions act by Majority vote, unanimous vote or some other vote?

Response: The California Commission conducted business by a majority vote of its members. The Joint Compact Commission conducted business on procedural matters (e.g., adopting minutes) by voice vote. Either State Commission could request a unit vote and most substantial or controversial business was conducted this way. The two Commissions would take a vote among their own members. A matter was adopted if both Commissions voted for it.

Question No. 4: With regard to the votes on the 1965 Draft Compact and the 1968 Compact proposed by the Joint Compact Commission: (a) what were the actual votes of each member of both State Commissions? and (b) were the affirmative votes of all members of both State Commissions required for their adoption?

Response: (a) According to Mr. Westergard, the 1965 and 1968 Compact versions received the unanimous vote of all commissioners; (b) the votes of both commissions were required as a unit vote.

Question No. 5: Was a representative of the Pyramid Lake Tribe or any other Indian tribe ever invited to participate as a formal member of the Nevada Compact Commission? If so, please provide documentation.

Response: According to Mr. Westergard, no.

Question No. 6: Was the Pyramid Lake Tribe (or any other Indian tribe) ever invited to participate in the Compact negotiations in any other way other than as an observer? If so, please provide documentation.

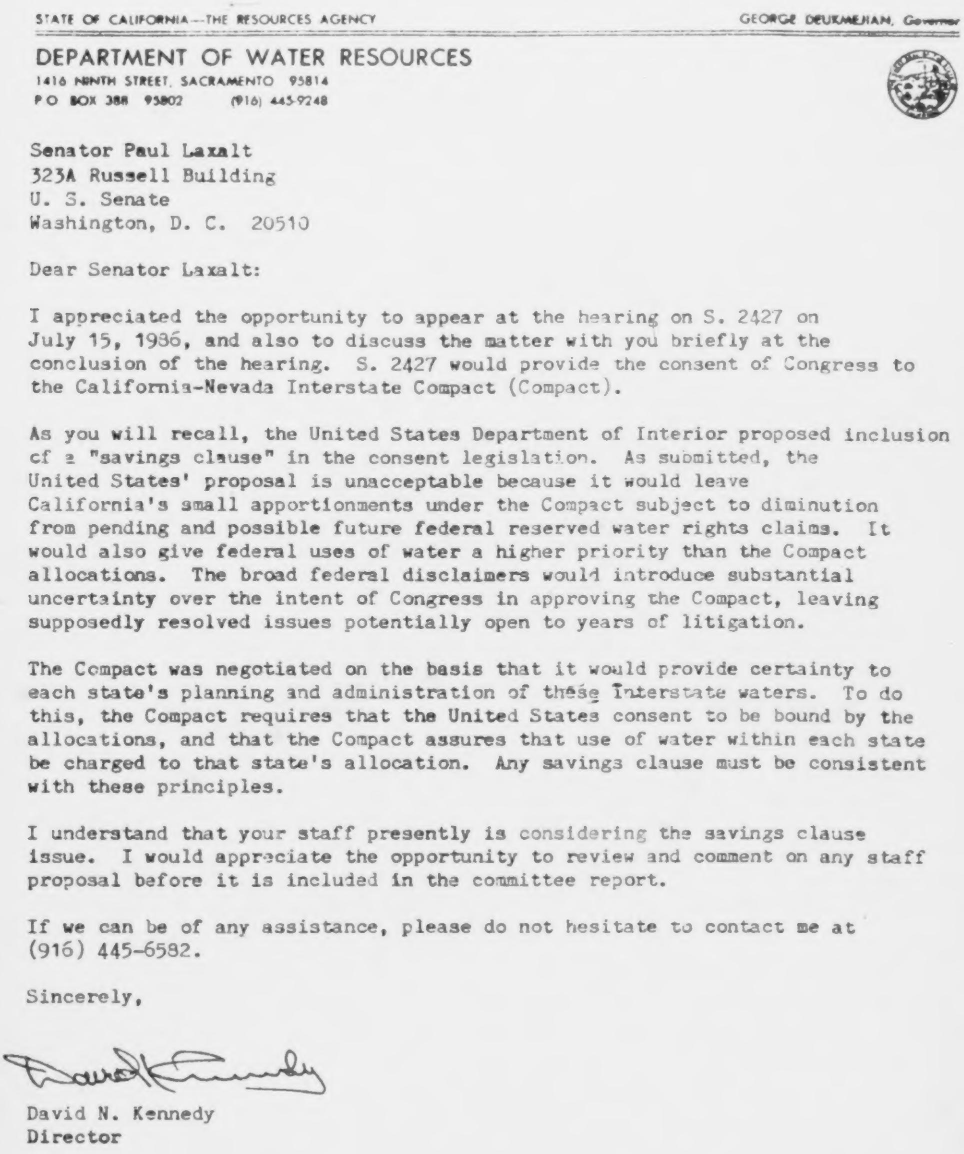
Response: See Response to Part 1, Question 1.

Part VI

Question Concerning Federal Liability

Question No. 1: If ratification of the compact results in the taking of water rights, would the federal government be liable to pay compensation for that taking? And if so, how much ratification of this compact wind up costing the federal government?

Response: The question calls for an interpretation of law applicable to federal agencies and for a fiscal analysis of their liability, if any. We express no opinion on this question.



STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, SACRAMENTO 95814
P O BOX 388 95802 (916) 445-9248

Senator Paul Laxalt
323A Russell Building
U. S. Senate
Washington, D. C. 20510

Dear Senator Laxalt:

I appreciated the opportunity to appear at the hearing on S. 2427 on July 15, 1986, and also to discuss the matter with you briefly at the conclusion of the hearing. S. 2427 would provide the consent of Congress to the California-Nevada Interstate Compact (Compact).

As you will recall, the United States Department of Interior proposed inclusion of a "savings clause" in the consent legislation. As submitted, the United States' proposal is unacceptable because it would leave California's small apportionments under the Compact subject to diminution from pending and possible future federal reserved water rights claims. It would also give federal uses of water a higher priority than the Compact allocations. The broad federal disclaimers would introduce substantial uncertainty over the intent of Congress in approving the Compact, leaving supposedly resolved issues potentially open to years of litigation.

The Compact was negotiated on the basis that it would provide certainty to each state's planning and administration of these interstate waters. To do this, the Compact requires that the United States consent to be bound by the allocations, and that the Compact assures that use of water within each state be charged to that state's allocation. Any savings clause must be consistent with these principles.

I understand that your staff presently is considering the savings clause issue. I would appreciate the opportunity to review and comment on any staff proposal before it is included in the committee report.

If we can be of any assistance, please do not hesitate to contact me at (916) 445-6582.

Sincerely,

David Kennedy

David N. Kennedy
Director

Senator **Laxalt**. We thank you very much. If this is not confirmed and ratified rather quickly, from a California perspective what do you think the future will be?

Mr. **Kennedy**. We have given that increasing thought. We certainly do not mean to threaten anybody, but we are now in Federal court with the Pyramid Lake Indians and we have about concluded that our only alternative is to initiate an action in the U.S. Supreme Court with Nevada and try and let that court determine once and for all who owns what on these various stream systems.

We think it would really be a mistake for us to continue to work in the district court in Sacramento when our dispute is an interstate one. We have spent all of these years trying to resolve it amicably. If this particular effort does not work out, I think we are probably to the point where California interests would be served by letting the U.S. Supreme Court make a final determination, an equitable apportionment.

Senator **Laxalt**. Does the Senator have any questions?

Senator **DeConcini**. I will wait.

Senator **Laxalt**. All right.

Mr. Marchant.

STATEMENT OF WAYNE N. MARCHANT

Mr. **Marchant**. Thank you, Mr. Chairman. I am Wayne Marchant. I am the Acting Assistant Secretary of the Interior for Water and Science. With me this morning, and seated behind Mr. Kennedy, is Ross Swimmer, who is the Assistant Secretary of the Interior for Indian Affairs.

We appreciate the opportunity to testify on this important bill, and I would observe that I am personally pleased to be able to be here. I am a native of northern California, one of only three or four known to exist. [Laughter.]

I am a graduate of the University of Nevada-Reno, and so I am very well aware personally of the value of these waters and the anxiety that attends their apportionment.

We are here today to offer the views of the Department of the Interior on S. 2457, a bill to grant the consent of Congress to the California-Nevada compact.

The Department supports the efforts of the States of California and Nevada, as represented in this compact, to apportion the waters of Lake Tahoe and the Truckee, Carson, and Walker Rivers between those States. This apportionment is an important step toward resolving the outstanding water disputes in the region.

The Department supports the compact, subject to an amendment to protect Federal rights and obligations of the United States, especially to Indian tribes, under Federal law and court decrees.

Since the compact was signed, many of the uncertainties surrounding the often conflicting claims to water in these river basins that the compact was designed to settle have been resolved in other forums. Specifically, I refer to the Federal court decisions in the Alpine and Orr Ditch decrees that have decreed the rights of Indians and numerous other nonfederal parties to certain specific quantities of water in the Truckee and Carson River systems.

Congress has also enacted a series of laws of general applicability, including the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act, that specifically affect the use and quality of water from these rivers.

Of particular importance is the Federal responsibility to protect the endangered and threatened species native to Pyramid Lake and their spawning grounds in the Truckee River. The courts have declared that the secretary has broad discretion to operate Stampede Dam and other Federal facilities in these river basins in order to fulfill his congressionally mandated responsibilities under these statutes and his trust obligations to Indian tribes.

We do not think the compact was intended to impair any decreed rights or future claims of the United States on its own behalf or as trustee for the Indians to the water of these rivers.

In fact, article XVIII supports this premise. Article XVIII C refers to "any claim or right of anyone to the use of water * * * that could or may be made or established under State or Federal law." Many of these claims or rights that were contemplated when the compact was ratified by the States have been finally established since the compact was drafted.

It is the position of the Department that these rights and future Federal claims must be protected. Article XXI appears to provide such protection. However, the rights and obligations recognized in article XXI are made subject to article XXII, which requires that in addition to congressional consent to the compact, Congress enact Federal legislation making certain provisions of the compact binding on the United States.

We believe that this requirement is most easily accomplished by adding a new section to S. 2457 enacting the provisions specified in article XXII into Federal law, subject to the terms and conditions of the proposed consent language that, with your permission, Mr. Chairman, we would like to submit for the record.

Senator LAXALT. It will be so filed.

[The following was received for the record:]

CONSENT LANGUAGE FOR A NEW SECTION TO S. 2457

Section (a) Consent is given to this compact: *Provided*, That the terms of this compact are and will be subject to all rights and obligations of the United States, its agencies, wards and instrumentalities, finally established or decreed, or that in the future may be established or decreed, by a court of competent jurisdiction or by the Congress of the United States, including but not limited to the Endangered Species Act, regarding the availability, quantity, quality or use of any waters of Lake Tahoe, the Truckee, Carson or Walker Rivers: *Provided further*, That nothing in the compact shall be deemed to enlarge or otherwise affect rights decreed in the *Orr Ditch*, *Alpine* or *Walker River* decrees to the detriment of the United States, it agencies, wards, and instrumentalities: *Provided further*, That the allocations made by this compact shall be subject to availability of water from those sources after all rights to water existing on the date of enactment of this act as well as those rights which may hereafter be decreed to the United States, its agencies, wards and instrumentalities have been satisfied: *Provided further*, That the Commission created by this compact shall not affect the rights and obligations of the United States, its agencies, wards and instrumentalities, except to the extent that such rights and obligations could be affected under state law in the absence of the compact. Any provisions of this compact that are inconsistent with the terms and conditions of this consent shall be of no force or effect on the United States, its agencies, wards and instrumentalities.

(b) Although the use of water by the United States or its agencies, wards and instrumentalities shall be charged as a use by the State in which the use is made, as provided in Article III C of the compact, such charge shall not be deemed to limit in any way the claims that may be made by the United States, its agencies, wards and instrumentalities.

Mr. MARCHANT. There are some provisions referred to in article XXII that, read broadly, do not reflect and, in fact, may be inconsistent with the rights and obligations of the Federal Government established subsequent to the date the compact was signed in 1971, as well as other future Federal and Indian claims.

The Department fully supports the efforts of the States to allocate their water resources pursuant to the compact. However, in order to ensure that Federal rights and obligations are protected, we recommend that another new section be added to the consent legislation called for by article XXII to clarify this matter by providing substantially as contained in our submission for the record.

That language, briefly, clarifies several features of the compact; for example, that applicable court decisions and Federal legislation will control the disposition of Federal rights when those rights are addressed by the compact commission; that the legislation clarifies the reservation of the right to continue to litigate such a claim and the right to pursue other claims such as may arise with regard to the Walker River Tribe.

Our proposed consent legislation also preserves the right of the States to continue to make decisions regarding the appropriation, distribution and use of waters within their boundaries when those rights are considered under the auspices of the California State Water Resources Control Board and the Nevada State Engineer and other appropriate forums.

The other details of our proposed submission would be made clear upon reading the language that we will offer for the record.

I would add, too, Mr. Chairman, that we would be pleased to work with the Committee to develop final language that would accomplish these purposes.

I would like to thank you for offering us an opportunity to present our views on the bill.

[Responses to written questions follow:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 2[illegible] 1986

Honorable Orrin G. Hatch
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Following the July 15, 1986, hearing before the Subcommittee on the Constitution, on S. 2457, a bill to grant the consent of Congress to the California-Nevada Compact, we received a number of written questions from members of the Committee. Some of the questions were directed to both the States of California and Nevada as well as the federal government. Where appropriate, we have deferred to the States for a response. For your convenient reference, we have restated each question before our response.

Questions from Senator Grassley

1. In your opinion, will the ratification of this compact bind the U.S. government into agreements it had no part in negotiating? If so, how?

By the Act of August 11, 1955, (65 Stat. 675) Congress granted its consent to California and Nevada to "negotiate and enter into a compact with respect to the distribution and use of the waters of the Truckee, Carson, and Walker Rivers, Lake Tahoe, and the tributaries of such rivers and lake in such States." The consent was given on the condition that a representative of the United States, appointed by the president, participate in the negotiations and report to the president and the Congress about them. A federal representative was present at the compact negotiations as an observer. (Memorandum to Acting Secretary of the Interior from California-Nevada Interstate Compact Committee, December 11, 1970.)

Throughout the compacting process, the federal position consistently has been that there is need for protection of vital federal interests. Significantly, the Department's proposed amendment would provide the necessary clarification that the responsibilities and interests of the United States will be protected.

2. Is it unusual for state compacts such as this to bind the U.S. Government to agreements between the states?

Answer.

While each compact is different, this compact appears to be unusual. This view is based on an understanding that compacts cannot be used to "increase the political power of the contractant States or to encroach upon the just supremacy of the United States." Constitution of the United States, Senate Doc. No. 92-82, 92 Cong. 2d Sess. 420-421. Thus, where significant Indian and other federal interests are involved in interstate water compacts, the compacts generally provide that their implementation will not affect any federal laws, properties, rights or projects including those which affect its responsibilities as trustee to Indian tribes. Our proposed amendment to S. 2457 would ensure that the legislation called for in Article XXII (3) of the compact does not impair any federal rights or obligations.

3. We have been told that the Justice Department has opposed this compact in the past. Since the Justice Department isn't here, are you aware of the Department's present position?

Answer.

The Department of Justice recently reviewed the compact in the context of a comprehensive settlement proposal. We are attaching a copy of the Justice Department's earlier response to the committee. Letter to Senator Strom Thurmond, Chairman, Committee on the Judiciary from Phillip D. Brady, Acting Assistant Attorney General, Office of Legislative and Intergovernmental Affairs, November 5, 1985. We direct your attention to pages 1, 10, and 11 of the letter which specifically address the compact. We have not been advised of any change in the Justice Department's position.

Questions from Senator DeConcini

(To the representatives of Nevada, California and the federal government regarding the meaning and effect of specific provisions of the compact.)

1. Describe in detail precisely what rights of the United States are ratified and confirmed by virtue of Article V(A)? To what degree, if at all, does Article V(A) ratify and confirm the Floriston Rates as set forth in either the Truckee River Agreement or the Decree in United States v. Truckee River General Electric Co.?

Answer.

Article V(A) would presumably ratify and confirm United States rights as they are presently constituted, which means as they are established and defined by the 1915 Decree (United States v. Truckee River General Electric Co.), the 1935 Truckee River Agreement, and the Truckee River Final Decree (United States v. Orr Water Ditch Co.).

2. What is the practical and legal effect of Article V(A) not being made binding on the United States and Indian tribes?

Answer.

By the terms of Article XXII (3), Article V (A) is not made binding on the United States. Consequently, the federal interests as decreed by the courts would remain in effect.

3. Describe in detail the transbasin diversions from the Lake Tahoe Basin that may be continued under Article V(E) and the amount of water involved in each such transbasin diversion.

Answer.

We defer to the States of Nevada and California for a response to this question.

4. Isn't it necessary to substantially revise or eliminate Article VII from the Compact in light of the subsequent entry of the Final Decree in the Alpine case in 1980? If not, why not?

Answer.

From the perspective of the federal interests, it would not be necessary to revise Article VII if the Department's proposed amendment to S. 2457 is incorporated in the final version of the California-Nevada Compact because the federal interests which have been decreed in the Alpine Decree would be protected.

5. What is the relationship between Article VII of the Compact and the 1980 Final Decree in the Carson River water rights adjudication, United States v. Alpine Land & Reservoir Co.?

Answer.

The allocations made in Article VII of the compact, standing alone, appear to differ from those in the Alpine Decree and possibly other court decisions rendered since the compact was negotiated. While the federal interests and rights that have been established in those decisions appear to be protected by Articles XVIII and XXI of the compact, the intervening decisions raise questions as to the scope of that protection. The Department's proposed amendment to S. 2457 makes certain that the compact, in fact, does protect the federal interests and rights as subsequently established.

6. What is the effect of the allocations in Article VII, insofar as those allocations provide greater amounts of water than the 1980 Final Decree in the Carson River adjudication, United States v. Alpine Land & Reservoir Co.?

Answer.

Please refer to our answer to question 5 immediately above.

7. What are the respective powers and duties of the Federal Water Master to administer and enforce the 1980 Alpine Decree and of the Compact Commission to administer and enforce Article VII of the Compact?

Answer.

The powers and duties of the water master are set forth in the Alpine Decree as modified in United States v. Alpine Land & Reservoir Co., 697 F.2d 851 (9th Cir. 1983). We are reluctant to attempt to interpret the authority of the compact commission over non-federal interests. As we discussed earlier, our proposed amendment would make clear that the federal and Indian interests are protected by the compact.

8. Why are existing beneficial uses of water for fish, wildlife and recreational purposes in Nevada omitted from Article VI (B)(4)(a) when all other existing beneficial uses are protected?

Answer.

No reason is clear from the compact text why this exclusion is made. Article XIII of the compact provides that the use of water for fish, wildlife and recreation is beneficial. Of course, under the Endangered Species Act, there is a federal obligation to protect listed fish and wildlife species. Our proposed amendment would clarify that federal responsibilities would not be impinged.

(Questions to the representatives of California and the United States regarding the meaning and effect of specific provisions of the Compact)

1. What is the relationship between the 6,000 acre feet allocation of Stampede water to California under Article VI (B)(3) and the obligations of the Secretary of the Interior under the Endangered Species Act?

Answer.

The Washoe Project Act of 1956 authorized storage in Stampede Reservoir for the purposes of agriculture, drainage, flood control, hydroelectric power, fish and wildlife, and other beneficial purposes. The Secretary of the Interior is presently exercising his discretion to operate Stampede Reservoir to meet flood control and fishery objectives in an effort to preserve the endangered cui-ui and the threatened Lahontan Cutthroat Trout. This action is part of the Secretary's conservation program for those fish species under section 7(a)(1) of the Endangered Species Act. Any allocation to California of Stampede water would be pursuant to contracts consistent with Reclamation and other applicable federal law. Our amendment would make clear that the Secretary retains his discretion to manage the waters of Stampede Reservoir.

2. How, if at all, would or could the current operation of Stampede Reservoir be affected by Article VI (B)(3)?

Answer.

Please refer to our response to question 1 immediately above.

3. How much of the water allocated to California under Article V(D) is currently appropriated and being used?

Answer.

In the interest of efficiency and comity, we defer to the State of California for preparation of an initial response to this question.

4. How much of the water allocated to California under Article VI(B)(1) is currently appropriated and being used?

Answer.

Please refer to our response to question 3 immediately above.

5. How much, if any, of the water allocated to California under Article VI(B)(4) is currently appropriated and being used?

Answer.

Please refer to our response to question 3 immediately above.

6. How much, if any, of the water allocated to California in Article V(D) is now being exported out of the Lake Tahoe Basin or reused prior to its return to Lake Tahoe?

Answer.

Please refer to our response to question 3 immediately above.

7. How much, if any, of the water described in the answer to the previous question is encompassed in the allocation under Article V(E)?

Answer.

Please refer to our response to question 3 immediately above.

8. Are there any current applications for the export of water from the Lake Tahoe Basin in California?

Answer.

Please refer to our response to question 3 immediately above. We know of no applications pending with the United States.

9. Are there any current applications for the reuse of water in the Lake Tahoe Basin in California before such water returns to the Lake?

Answer.

Please refer to our response to question 8 immediately above.

10. Do you know of any plans for the export of water from, or the reuse of water in, the Lake Tahoe Basin in California as authorized in Article V(D)?

Answer.

We know of no such plans.

11. What plan or ideas, if any, does California have or has California considered for utilizing the allocation as authorized in Article V(D)?

Answer.

We defer to California for a response to this question.

12. Approximately how much additional storage capacity would be required to develop the full 10,000 acre feet allocated annually under Article VI(B)(4) to enable the full use of that annual allocation under sustained drought conditions?

Answer.

Please refer to our response to question 3 immediately above.

(Questions to the representatives of
Nevada and the United States regarding the meaning and effect
of specific provisions of the Compact)

1. How much of the water allocated to Nevada under Article V(D) is currently appropriated and being used?

Answer.

In the interest of efficiency and comity, we would prefer to review Nevada's response to this question before attempting an analysis of our own.

2. How much, if any, of the water allocated to Nevada in Article V(D) is now being exported out of the Lake Tahoe Basin or reused prior to its return to Lake Tahoe?

Answer.

Please refer to our response to question 1 immediately above.

3. How much, if any of the water described in the answer to the previous question is encompassed in the allocation under Article V(D)?

Answer.

Please refer to our response to question 1 immediately above.

4. Are there any current applications for the export of water from the Lake Tahoe Basin in Nevada?

Answer.

Please refer to our response to question 1 immediately above. We know of no applications pending with the United States.

5. Are there any current applications for the reuse of water in the Lake Tahoe Basin in Nevada before such water returns to the Lake?

Answer.

Please refer to our response to question 4 immediately above.

6. Do you know of any plans for the export of water from, or the reuse of water in, the Lake Tahoe Basin in Nevada as authorized in Article V(D)?

Answer.

We know of no such plans.

7. What plan or ideas, if any, does Nevada have or has Nevada considered for utilizing the waters of the Truckee River pursuant to Article VI(B)(4)(c)?

Answer.

We defer to Nevada for a response to this question.

If there is additional information that you believe we could provide to assist you in your deliberations, please do not hesitate to contact us.

Sincerely,

Wayne N. Marchant

Wayne Marchant
Acting Assistant Secretary for
Water and Science

Senator LAXALT. We appreciate your testimony. As far as the chairman is concerned, the support of the administration of the compact is greatly appreciated. It has been a continuing support over many, many years.

As far as the saving language is concerned, I have no problem with that. I do not know that any of the members of the subcommittee would. We want to ensure that what the compact does in respect to protecting the various rights of the individuals in the future is preserved.

I only have one problem. If language of the type that you are recommending to the subcommittee would be adopted, would this require, in the estimation of counsel in the administration, additional ratification on the part of the two legislatures? I would hate like the devil to have to go through that drill again.

Mr. MARCHANT. Mr. Chairman, as you might imagine, that was the subject of considerable animated discussion as we formulated our statement, and it is the view of our counsel that that would not be required.

Senator LAXALT. Let us hope counsel is right.

Mr. MARCHANT. Yes. [Laughter.]

Senator LAXALT. Senator DeConcini, do you want to have some questions to address to the panel?

Senator DECONCINI. Yes.

Senator LAXALT. Perhaps, Assemblyman Dini, if you would like to return to your seat, the Senator has some questions to address to all of you.

Senator DECONCINI. Mr. Chairman, thank you. You have raised a question that I wanted to ask Mr. Marchant, whether or not, in their judgment, the compact would have to go back to the State legislature for ratification.

The consent amendment that you have suggested here is of interest to me. First, let me say for the record, Mr. Chairman, I am not here to rain on anybody's parade. I understand these interstate water compacts and the delicateness of them.

My concern is that I have some native American interests in Arizona that have brought to my attention a possible precedent here of a compact that would not take into consideration Indian water rights, and that is the reason for my presence, not to cause you any further gray hair or consternation, Mr. Chairman. I know you have worked on this for a long time.

I do want to ask, Mr. Marchant, if this amendment you discussed in your testimony has been reviewed and discussed with the Indian tribes?

Mr. MARCHANT. In developing this language, we worked in close collaboration with the staff of the Assistant Secretary for Indian Affairs. I cannot say that we have consulted directly with the tribes.

Senator DECONCINI. So you do not know what their position is?

Mr. MARCHANT. I could only speculate, and I do not think that would be productive.

Senator DECONCINI. Would you care to speculate?

Mr. MARCHANT. I would reserve that. I would add, Senator, that we have made every effort to make it explicit in our language, as we think it is explicit in the compact, that the rights of the tribes are well protected.

Senator DeConcini. Well, the Member of Congress who was just here indicated that she thought it could be taken up and satisfied by report language, and I am more than happy to see such language and to entertain it because if the Indian rights can be protected in report language, I think that is a very excellent way to do it.

If this compact should be approved without the amendment that you are suggesting here, what would be the position of the Department on the compact in and of itself?

Mr. Marchant. I cannot speculate on that, Senator.

Senator DeConcini. Well, you do not have to speculate. Let us say we did not adopt this amendment. What would your position be? Would you support the compact or would you not support it? It makes a lot of difference to me on whether or not we report this out.

Mr. Marchant. I am afraid I am just not able to answer that question at the moment. We have not considered the possibility that it might be enacted in the absence of the clarifying language that we proposed

Senator DeConcini. Has the Department always supported this, do you know?

Mr. Marchant. In this administration, we have. We offered supportive testimony in the context of S. 1558, which included ratification of the compact in the context of a larger settlement of Indian issues.

Senator DeConcini. Past administrations were also supportive?

Mr. Marchant. Well, it is a matter of record that prior administrations were not supportive, but it is our view that many of the reasons for their lack of support have since been addressed, especially by the language contained in the *Alpine* and *Orr Ditch* decrees, and other adjudications.

Senator DeConcini. Maybe someone from the State of Nevada could help me here. Article XXI of the compact makes a point of emphasizing that the compact will not affect either Federal obligations to Indian tribes or the rights of Indians.

But article XXII requires that Congress make the Federal provisions of the compact binding on the wards of the United States, which is really an indirect reference, I think, to Indian tribes.

Why is it necessary to bind the United States and Indian tribes by this compact?

Mr. Westergard. Mr. Chairman, as Mr. Kennedy pointed out, we feel it is necessary, and the history of the negotiations would indicate that it is necessary to assure that we have a true interstate allocation.

In the absence of binding, as Mr. Kennedy explained, there would be a possibility of infringement on the allocation set-aside perhaps to either State or to both States. This was considered when the percentages of allocations were determined and, very candidly, that is why we were able to get over 90 percent of the water of the Truckee River for the State of Nevada.

Senator DeConcini. And what Indian rights would this clause cut off?

Mr. WESTERGARD. I do not think that it would cause any to be cut off, sir. They could, as the compact indicates, exercise any and all prerogatives to secure whatever rights they could establish through whatever forum.

They would be limited to exercising those rights within the allocation to the State of Nevada or the 90-plus percent.

Senator DECONCINI. If that is the case, then why do you need it in there in the first place?

Mr. WESTERGARD. To make it clear, I think, sir, that at some time in the future there would not be a claim against rights in the State of California. As Mr. Kennedy has indicated, there is an interstate suit pending in the State of California which challenges the allocations to the State of California by the tribe.

One of the challenges is against the allocation to the Lake Tahoe Basin, and we feel it is imperative to have a water supply firmed up for that area.

Senator DECONCINI. So it is your position, if I understand it, then, that this only satisfies the dispute between California and Nevada. It does not alter in any way the rights that an Indian tribe may have toward any of those waters, if they can so show some rights.

Mr. WESTERGARD. The water that would be allocated to the State of Nevada; that is right, sir. They would have every prerogative available to them to secure rights under that allocation.

Mr. KENNEDY. May I comment on that on behalf of California, Senator?

Senator DECONCINI. Yes, sir, Mr. Kennedy.

Mr. KENNEDY. I think you have got to the whole point of this exercise, and that is whatever rights the Indians have got, we do not affect them, as long as they are within the State of Nevada. They are free to assert whatever rights they have, but anything they are entitled to has to come out of the State of Nevada's 90 percent. They cannot get additional water out of our 10 percent. That is really the whole point of this thing.

Senator DECONCINI. Now, that is not clear to me by reading these articles. Would the proponents of this have any objection if we had report language or bill language indicating that those rights are still totally subject to court interpretation if they are so raised by the native Americans?

Mr. WESTERGARD. I think if there were clarifying language that met the criteria that the Chairman has pointed out—one, that the integrity of the compact and the interstate allocations be preserved in the first instance, and in the second instance that the amendments not constitute a substantive enough change so that it would require reratification by the States———

Senator DECONCINI. I understand that problem. But if we are talking about a consent amendment here that does not require reratification it seems to me a clarifying amendment indicating that this would not, if, in fact, there were any Indian water rights there, alter their capability or ability to pursue them would be in order.

Mr. WESTERGARD. Yes. I think it is clear in the compact, sir, and so long as development of that type of consent language did not forestall this so it is delayed and we can move expeditiously, we would have no concern about consideration.

I might add and reassure you, sir, that once the allocation between the States is firmed up by ratification of this legislation, we stand ready on behalf of the State of Nevada to again open discussions, negotiations, talks, or whatever with the tribe and all other interested parties in Nevada to resolve the intrastate issues.

Senator DECONCINI. Have you had any such negotiations?

Mr. WESTERGARD. Not since the legislation was, in effect, rejected by the Indian tribe, which was alluded to earlier.

Senator DECONCINI. Which was, what, 15 years ago, or when was it?

Mr. WESTERGARD. No, sir. That was within the last few months. Congressional hearings were held and it was subsequently rejected by the tribe.

Senator DECONCINI. Thank you for that background.

Senator LAXALT. That was on a comprehensive settlement.

Senator DECONCINI. It was? For the whole State?

Senator LAXALT. Both.

Senator DECONCINI. Thank you.

Why are the existing beneficial uses of water for fish, wildlife and recreational purposes in Nevada omitted from article VI(B)(4) when all other existing beneficial uses are protected?

Mr. WESTERGARD. Very candidly, sir, as Mr. Kennedy has pointed out, the allocation to the State of California—and I am reluctant to say this in case we get into an interstate suit later—is not very much water, and in order to reach the agreement with the State of California to secure over 90 percent for Nevada, we had to agree that at some time in the future, if there were water required for municipal purposes in the State of California for human consumption and all other available water supplies had been developed as allocated in the compact, we would concede, provided Nevada had the opportunity to participate in the development of additional water supplies for human consumption—if, in fact, the water flowing to Pyramid Lake had been an exception, there would have been no water for development for human consumption in the future, but it was tied to the very minimum quantities allocated to California.

Senator DECONCINI. You do not interpret this omission to mean that the Endangered Species Act would not apply?

Mr. WESTERGARD. Absolutely not, sir. As a matter of fact, the Nevada Legislature, at the request of the Indian tribe, changed State law to provide that fish, wildlife and recreation is, in fact, a beneficial use.

Senator DECONCINI. That is in the Nevada law?

Mr. WESTERGARD. Yes, sir, and it is also in the compact.

Senator DECONCINI. Thank you.

Would you support an amendment to this legislation which clarifies the rights and obligations of the Federal Government if the amendment did not require the ratification of the compact by the legislatures? Any amendments that do not require ratification, would you support them?

Mr. WESTERGARD. We would prefer if it could be handled in the committee reporting procedures, which I am not totally familiar with. If it met the basic criteria that the integrity of the interstate allocation were not compromised or in any way violated and if it did not require reratification and if it could be done expeditiously so that we could get this matter on, we would prefer, sir, if that were suggested, that we have a commitment from other parties, including the tribe, that they would support the compact and not oppose it if, in fact, that were to take place.

Senator DECONCINI. What about the consent amendment offered by the administration?

Mr. WESTERGARD. We feel, with all due respect to the Administration, that we have not had the opportunity to evaluate that. My analysis very briefly would indicate to me that that would be a substantive amendment and could possibly affect the interstate allocation.

I think, personally, again, with all due respect to legal counsel, that it may require reratification by the States.

Senator DECONCINI. Can you give me a brief summary of why negotiations with the States, tribes, and Federal Government have not produced an agreeable compromise?

Mr. WESTERGARD. They certainly proceeded over a long period of time in good faith under several different times, and we thought a few months ago, as I think our congressional delegation did, that we had consummated a final agreement.

There was all kinds of give-and-take and concessions and good-faith efforts. At the very last minute, as a matter of fact, when we appeared here in Congress in the congressional hearings, representatives of the tribe indicated that the tribe itself was not satisfied with the conditions of that agreement.

And very candidly, sir, they went back and held a referendum vote and the tribe rejected it and——

Senator DECONCINI. When was that?

Mr. WESTERGARD. It was last fall.

Mr. KENNEDY. It was in November, I believe.

Mr. WESTERGARD. We were disappointed, to say the least, because we thought we had an agreement, and we had to make a decision as to the next step to take. As Congresswoman Vucanovich said, we thought that the best procedure was to go ahead with the interstate allocation which has been the subject of so much deliberation through the years, and then make a commitment, once we have settled with California, so to speak, to address the intrastate issues.

Senator DECONCINI. Mr. Chairman, thank you.

Mr. KENNEDY. May I make one other clarifying comment, Mr. Chairman?

Senator LAXALT. Surely.

Mr. KENNEDY. California did not participate in those negotiations on your bill last year. If you recall, California was not invited to participate and when it was all over, we were shown what was negotiated. We made a couple of suggestions and we did support that bill because we wanted the compact ratified.

But we were not at all involved in the Pyramid Lake negotiations last year; this again indicates that it is essentially a Nevada issue.

Senator DECONCINI. Mr. Chairman, I have a lot of other questions here that I would be more than happy to submit and have answered in due time.

Senator LAXALT. Very well.

Senator LAXALT. Do any members of the panel have anything more to offer?

Mr. WESTERGARD. Thank you, sir.

Senator LAXALT. We thank you very much.

Mr. KENNEDY. Thank you.

Senator LAXALT. The next panel consists of Stuart Udall, former Secretary of the Interior, and I understand the secretary was not able to make it and has a substitute, and Whitney Tilt from the National Audubon Society.

Welcome, Mr. Tilt.

Is there a representative here for the secretary?

[No response.]

Senator LAXALT. If not, why do you not proceed?

STATEMENT OF WHITNEY TILT, WILDLIFE SPECIALIST, NATIONAL AUDUBON SOCIETY

Mr. TILT. Thank you. Mr. Chairman, distinguished members of the subcommittee, I am Whitney Tilt, a wildlife specialist for the National Audubon Society. I am here today on behalf of numerous environmental groups—Defenders of Wildlife, Environmental Defense Fund, Environmental Policy Institute, the Sierra Club, National Audubon Society, the Northern California Council of Fly Fishers, and the Natural Resources Defense Council—to ask you not to approve this bill as it appears before you.

The Sierra Club also wishes to submit separate testimony, and I ask that my testimony and the Sierra Club's be admitted to the record.

Senator LAXALT. They will be so received and filed.

Mr. TILT. If I might take a few minutes of the subcommittee's time to reiterate some of the major points?

Senator LAXALT. Surely.

Mr. TILT. We recognize that the compact and the previous legislative efforts, such as the Senator's settlement act last year, are the results of hundreds of hours of negotiation in attempting to resolve the water conflicts in this region.

The settlement bill advanced by Senator Laxalt last year may well have represented the best effort since 1902 to settle this decades-old dispute. Title II of that bill is before us here today. Missing, unfortunately, is title I that offered the framework for settlement.

While we recognize that disagreements between the various parties have led to very difficult settlement negotiation, we request that the subcommittee recognize that a number of important issues still remain outstanding if we are to achieve such a settlement.

Basically, these are fourfold.

The compact prevents movement toward settlement. Throughout the compact's existence, congressional ratification of the compact has been consistently opposed by all administrations, largely on the grounds that the Federal interests and Indian rights were not adequately represented or protected. Both the Departments of the Interior and Justice have opposed the compact because it seeks to bind the Federal Government both as a sovereign and a trustee of these Indians. We see that concern echoed today in the consent language that the administration has offered, and it would appear by our quick perusal of it that article XXII and the administration's consent agreement are in conflict. In fact, this consent would replace article XXII, but that would be up to the subcommittee.

Second, the compact, in its age, is obsolete and little or no analysis has been done to determine the impacts arising from the compact's ratification on the environment. It has not been reviewed under, or made consistent with, the policies of the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act, not to mention the California Environmental Quality Act.

If we look at Pyramid Lake, which is obviously something we will hear from the tribal panel a great deal, even though both the Bureau of Reclamation and the Fish and Wildlife Service have put together a very complex and sophisticated computer model to look at various water management scenarios, not even this elementary evaluation has been done to determine the impacts to Pyramid Lake from this compact.

Third, we have heard a lot from other witnesses about the dangerous precedent that this compact would offer by binding the interests of the Federal Government.

Finally, the interstate compact sacrifices the preservation of endangered and threatened species and the fisheries-dependent livelihood of the Paiute Indian tribes. The fate of these fish species rests largely on the efforts to resolve water allocation disputes and to distribute these benefits among all parties, including Reno-Sparks, the Truckee-Carson Irrigation District, the tribe, and the Federal interest.

We will hear shortly that the Indian tribe has been, and will likely continue to be, the primary champion of the cui-ui as a result of its close cultural and economic ties with the fish.

There is an alternative. Senator Laxalt advanced the concept of settlement legislation in S. 1558 last October. It might be worthwhile for this subcommittee to look at the language in Mr. Broadbent's testimony on the administration's support of that bill because it stated that support of title II by the administration was contingent on title I: That settlement legislation was part of the bill. I would refer you to page 136 in the Senate hearings on S. 1558.

After much negotiation, the parties had narrowed but not completely eliminated their differences; I refer to the settlement process under S. 1558. That process broke down, but we would ask that the enormous amounts of data generated by the process not be squandered at this time.

In closing, we ask that that settlement process be rejuvenated and that the parties be brought back to the table, recognizing that there is simply not enough water to go around and that we cannot afford business as usual.

I thank you for this opportunity to appear before you here today.

Senator LAXALT. We thank you very much, Mr. Tilt.

May the record indicate the presence of Senator Simon.

Senator SIMON. I thank you, Mr. Chairman, and I am here to learn.

Senator LAXALT. You do not have any questions, Senator?

Senator SIMON. I do not at this point. Thank you.

Senator LAXALT. Senator DeConcini, did you have any questions?

Senator DECONCINI. Not right now; go ahead.

Senator LAXALT. You heard the administration proposal on clarifying language this morning?

Mr. TILT. Yes, I did, sir.

Senator LAXALT. Are you familiar enough with the concept to give us an opinion as to whether or not that would be acceptable in terms of preservation of rights under Endangered Species?

Mr. TILT. A cursory examination of it would suggest that that clarifying language would greatly help alleviate some of our concerns, and we would look forward to working with you to see if such language could alleviate our concerns.

Senator LAXALT. And I might say as far as I am concerned, it is a matter of continued negotiation. There is no particular problem, except we have negotiated ourselves literally to death these last several years.

And I have pretty much come to the conclusion, particularly since the comprehensive settlement blew up last year when we thought we had an arrangement, that the only way we are going to salvage this at all, really, is to proceed with this compact, and that results, as several witnesses have indicated, in an allocation only between the two States.

Whatever differences there may be within the respective States, those various rights we want to protect here. I am not averse to continued negotiation, but our problem is that time is simply running out.

Mr. TILT. We recognize that, and hope that the language such as the administration offers and the testimony offered today may help to fashion, if we are to have a compact, one that addresses those new needs that have emerged since 1972.

Senator LAXALT. That is good to hear. The language may be the bridge that we are looking for.

Mr. TILT. We can hope.

Senator LAXALT. Thank you very kindly.

Mr. TILT. Thank you, sir.

Senator DECONCINI. Mr. Chairman.

Senator LAXALT. Yes.

Senator DECONCINI. If I could ask a question, Mr. Tilt, you indicate that with this consent amendment from the administration or other clarifying language that you feel that this may be the solution.

In your judgment, do you think it would take reratification by the two State legislatures?

Mr. TILT. I can hide behind being more of a biologist than a legal mind, so I am not sure I am qualified to——

Senator DECONCINI. You may have a better observation or opinion. [Laughter.]

Mr. TILT. Sir, I recognize that handing this compact back to the States poses a great deal of problem, and if it could be in the interests of the two States to see this compact ratified by you, the subcommittee, by not having to go back to the States, obviously we all gain.

A lot of our concern is on language that we are not sure what it really means. It can be interpreted two ways. One could be the beneficial use to the Indian tribe and the fisheries, and we would support that.

However, in a cynical way, we also have to protect ourselves and hope that this language cannot be construed the other way so that these traditional water uses of irrigation and growing municipalities and all would not be allocated in such a way to be detrimental to the Indians and the fish.

Senator **DeConcini**. Thank you, Mr. Chairman. Thank you, Mr. Tilt.

Senator **Laxalt**. We thank you very much.

Mr. **Tilt**. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF WHITNEY TILT

Mr. Chairman, distinquished members of the Constitution Subcommittee, I am Whitney Tilt, Wildlife Specialist for the National Audubon Society. I appear today on behalf of the Defenders of Wildlife, Environmental Defense Fund, Environmental Policy Institute, Natural Resources Defense Council, National Audubon Society, Northern California Council of the Federation of Fly Fishers, and the Sierra Club to urge this Subcommittee not to approve S. 2457 unless and until it is made part of a comprehensive and fully responsive scheme of water management in the central Sierra Nevada region of California and Nevada. The Sierra Club is also submitting separate testimony for the record.

The interstate compact that S. 2457 would ratify was negoitated more than 15 years ago, before anyone was aware of the serious problems of contamination at Stillwater National Wildife Refuge and of the endangerment of the fishery resources in Pyramid Lake. Whatever the merits of the compact 15 years ago, it was not intended to, and cannot, solve the serious problems that we recognize today. Indeed, the compact's greatest danger is that it may limit our flexibility today to fashion responsible solutions to those pressing problems.

The organizations named here represent a total national membership of 1,123,000, with 237,500 members in California and Nevada. These five organizations are dedicated to maintaining and enhancing environmental quality, and to ensuring that federal and state laws for protecting the environment are fully and properly implemented. The wise management of vital water supplies for the beneficial use of man, wildlife, and natural systems are high among the priorities of these five organizations.

OVERVIEW

Defenders, EDF, EPI, NRDC, Sierra Club, the Fly Fishers, and Audubon recognize that the California-Nevada Interstate Compact, as presented for Congressional approval in S. 2457, and previous legislative efforts such as the Pyramid Lake Paiute and Truckee River Settlement Act (S. 1558), are the result of hundreds of hours of negotiation in attempting to settle the water conflicts in the Lake Tahoe, Truckee, Carson, and Walker River drainage basins. The settlement bill advanced by Senator Laxalt last year may well have represented the best attempt since 1902 to settle this decades-old water battle.

Title II of that bill is before us today as S. 2457. Missing is Title I that offered a framework for settlement. While we recognize that disagreements between the various water interests have made the search for equitable settlement difficult, we request that this Subcommittee recognize that there are a number of important issues in this proposed bill that cause considerable concern with respect to achieving an equitable settlement to all parties, be they agriculture, municipalities, the Pyramid Lake and Walker River Paiute Indian tribes, wetlands, or endangered species.

S. 2457 would ratify the California-Nevada Interstate Compact which apportions the waters within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins between the two states. Begun in 1955, the compact was adopted by the California legislature in 1970, and by the Nevada legislature in 1971.

Our opposition to S. 2457, and to ratification of the California-Nevada Interstate Compact, is four-fold:

1. The compact prevents movement towards a settlement among the Truckee-Carson water interests;
2. The compact is obsolete, and little or no analysis has been undertaken to determine impacts arising from ratification of the compact. Furthermore, the compact, ratified by the states in 1970, has not been reviewed under, and made consistent with the policies of the Clean Water Act, Endangered Species Act, National Environmental Policy Act, and state environmental quality review acts;
3. The compact establishes a dangerous precedent by binding the interests of the federal government. This compact subordinates federal water rights and wildlife interests to state and local decision-makers; and
4. The interstate compact sacrifices the preservation of two endangered/threatened species, the fisheries-dependent livelihood of the Pyramid Lake Paiute Indian Tribe, and the wetlands of Stillwater and Carson Lake wildlife management areas.

1. COMPACT PREVENTS SETTLEMENT

Throughout the compact's existence, congressional ratification of the compact has been consistently opposed by all administrations--largely on the grounds that federal and Indian water interests were not adequately represented and protected. The Department of Interior and Justice have opposed the compact because its seeks to bind the federal government, both as a sovereign and as trustee for the Indians.

Most recently, during the Senate Hearing on S. 1558 in October, 1985, Robert Broadbent, Assistant Secretary for Water and Science, Department of Interior explained that the current administration's willingness to support S. 1558, which included the CA-NV interstate compact, was based on Title I which "gives the best opportunity that the endangered and threatened fish are going to have to recover." S.Hrg. 99-547, p.139. In his prepared statement, Broadbent states further:

> This compact has been before the Congress in the past and the Department unfortunately was forced to oppose its ratification because of its failure to adequately address the claims of the Pyramid Lake Paiute Tribe. The situation is now entirely different. In this instance, the Compact comes to the Congress in the context of an overall settlement of the claims associated with the Truckee River and Pyramid Lake. S.Hrg. 99-547, p.136.

It is made clear that any approval of the compact by the Department of Interior is conditional on the presence of settlement language whose successful implementation is a condition to approval of the compact.

To date, the Department of Interior, representing the mandates of the Bureau of Indian Affairs, Bureau of Reclammation, and Fish and Wildlife Service, has opposed ratification of the unrevised compact standing alone. We concur.

2. COMPACT IS OBSOLETE AND ITS IMPACTS UNDISCLOSED

Efforts to draft an interstate water compact between California and Nevada began in 1955 and were concluded in 1971. The compact before this Subcommittee today is that same document.

In the years since 1971, our knowledge of water management analysis, endangered species protection, and water conservation techniques has advanced light years. Congress has honed its policies towards these issues through the passage and implementation of the National Environmental Policy Act of 1969 (NEPA), Federal Water Pollution Control Act Amendments of 1972 and 1977 (FWPCA), and the

Endangered Species Act of 1973 (ESA). The compact was drafted prior to the implementation of NEPA, FWPCA, and ESA, and has not been reviewed under, and made consisent with, these statutes.

Cursory evaluation of fish and wildlife values in the compact suggests that water availability to the Lahontan Valley wetlands and the Pyramid Lake fish resources will be reduced by the establishment of additional municipal, industrial, and agricultural water rights. However, even though the Bureau of Reclamation and Fish and Wildlife Service have access to sophisticated computer simulation models to evaluate various water management scenarios, the effects of the compact on Pyramid Lake fisheries have not been evaluated.

At minimum, this Subcommittee should defer action on this bill pending completion of the elementary impact analysis.

3. COMPACT BINDS THE INTERESTS OF THE FEDERAL GOVERNMENT

S. 2457 is unlike interstate compacts that normally appear before this Subcommitte. Traditionally, most interstate water compacts involve two or more states resolving issues with little, if any, direct federal interest involved. S. 2457, however, goes beyond this "typical" interstate water compact in that it seeks to bind the federal government, both as sovereign and as trustee for the Indian tribes.

> Compact shall become effective when Congress has agreed that certain provisions of the Compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Article XXII (3).

Given that the United States owns or controls virtually all storage and water control facilities within the river basins; has trustee obligations to the Pyramid Lake and Walker River Paiute Indian tribes; and has significant wildlife and wetland interests in this region, it appears obvious that the compact is of more than a passing interest to this Subcommittee and Congress. In fact, we find it appalling that a compact that proposes to turn over control of water supply and control structures, wildlife refuges, and other federal interests, funded by and maintained for the American people, would even be considered by Congress. In short the compact would:

- Have the American taxpayer pay for millions of dollars of holdings and investments... then,
- Request that Congress hand over these interests to the control of a state/regional commission on which the federal government has no representation... and
- Request the federal government to abandon its responsibilities as trustee to two Indian tribes and ignore the government's responsibilities to endangered species.

Addressing the issue of federal representation on the compact, Secretary of Interior Cecil Andrus in 1979 recommended a federal-interstate compact of the type used in the Delaware River Basin Compact of 1961 (letter from Secretary Andrus to James McIntyre, OMB Director, dated May 25, 1979). Equally important is the precedent-setting effect of the action on future interstate compacts.

4. COMPACT FAILS TO PROTECT ENDANGERED SPECIES, LIVELIHOOD OF THE PAIUTE INDIAN TRIBE, AND PRESERVATION OF WILDLIFE MANAGEMENT AREAS

Two fish species found in the Truckee-Carson river system are listed under the Endangered Species Act. The cui-ui (Chasmistes cujus) belongs to a genus of sucker-like fish and is only found in Pyramid Lake. The cui-ui has two important characteristics pertinent to our discussion today: its strong anadromous tendencies (movement from saline waters upstream to spawn in freshwater), and the species' relatively long life (up to 40 years). During this century, the strong anadromous tendency has been hampered by the loss of stream flows that has prevented the fish from gaining access to the lower Truckee River to spawn on a regular basis (due to upstream diversions the lake's level declined in excess of 70 feet between 1925 and 1967). For shorter-lived species, this loss of access to spawning grounds in low water years would be catastrophic, and such was the case with the celebrated sport-fish, the Pyramid Lake cutthroat, which became extinct in the early 1940's as a result of habitat degradation and the fish's inability to gain access to the river to spawn. The long life span of the cui-ui, however, has enabled the species to survive on dominant year-classes that may come decades apart. Currently 95% of the spawning cui-ui population is comprised of the 1969 year class.

The Lahontan cuttroat trout (LCT), Salmo clarki henshawi, is considered threatened in Pyramid Lake, where its continued presence is secured only through hatchery efforts. It appears unlikely that a self-sustaining natural population can be restored to Pyramid Lake due to a number of factors, including different water needs than the cui-ui, competition from introduced trout species, and loss of spawning access and habitat. The species, however, is likely to benefit from efforts to rehabilitate LCT spawning habitat along the lower Truckee River.

The fate of these fish species rests on efforts to resolve water allocation conflicts and to distribute benefits among a number of parties including the Pyramid Lake Paiute Tribe, Cities of Reno/Sparks, the Truckee Carson Irrigation District, and the Department of Interior's Bureau of Reclamation. The Pyramid Lake Paiute Indian Tribe has been, and will likely continue to be, the primary champion of the cui-ui as a result of its close economic and cultural ties with the fish. Pyramid Lake and the Truckee River are considered the source of the Tribe's sustenance and livelihood-- spiritually, culturally, and economically. The Tribe's own name for themselves sums up the importance of the cui-ui and Pyramid Lake for this Indian people:

> **We call ourselves "cui-ui dakodo", cui-ui eaters.**
> (Wilfred Shaw, Chairman Pyramid Lake Tribe, S.Hrg. 99-547, p. 250)

Under the California-Nevada Interstate Compact, water would be diverted from the Lake Tahoe basin (Article V (D)), which is part of the Truckee River system, thereby reducing the inflows to Pyramid Lake. Moreover, the compact (Articles VI (B)(3) and (4)) allocates to California up to 16,000 acre feet of water annually from the Stampede Reservoir and potential new storage facilities, all of the water which has been, and is currently being used for the benefit of Pyramid Lake's endangered and threatened fish species under a final federal court decision. See Carson-Truckee Water Conservancy Dist. v. Clark, 741 F.2d 257 (9th Cir. 1984), affirming 549 F. Supp 704 (D. Nev. 1982), cert. denied, 105 S. Ct. 1842 (1985). The 16,000 acre feet figure is misleading since a much larger reserve of water is necessary to store in order to "drive" these allocations. An estmiated 50,000 acre feet in Stampede Reservoir would be necessary to ensure the Article VI (B)(3) allocation, while a new storage facility of some 100,000 acre feet would need to be stored to drive the Article VI (B)(4) allocation. The compact also allocates water from the Carson River Basin (Article VII). As a result, diversions from the Truckee River System will undoubtedly increase, thereby further reducing the water flowing into Pyramid Lake and its fish.

Though fisheries are given a low priority in this bill, wetlands receive even less consideration. A brief historical note here is enlightening. Prior to the building of the Newlands Project, commencing in 1905, Pyramid Lake overflowed into Winnemucca Lake, some 25 miles long and four miles wide. So rich were the wetlands and associated wildlife values of this area that Winnemucca was designated a National Wildlife Refuge in 1936 by Executive Order. Unfortunately, water diversion had increased rapidly since 1905, and by 1938 Winnemucca Lake was permamently dry. With its water gone, Winnemucca was a wildlife refuge in name only, and was offically removed from the refuge system in 1966.

This illustrates the delicate balance between water and wetlands in western Nevada. According to Nevada sources, 75% of the terminal wetlands associated with the Carson, Humbolt, and Truckee river systems have been lost as a result of reduced water flows, even though the waters of the Carson have been supplemented by the Truckee River. Currently, approximately 50,000 acres of wetlands exist in the Lahontan Valley, requiring an estimated 250,000 acre/feet of water on an annual basis for maintenance of the existing wetlands. These remaining wetlands are a vital resource for a wide range of indigenous and migratory wildlife.

Stillwater National Wildlife Refuge and Carson Lake wetlands are currently maintained through diversions from the Lahontan Reservior. Under this system, management of the wetlands is a feast or famine situation that makes effective wildlife management next to impossible. During very high water years, such as 1986, wetlands become lakes with vegetation lost, waterfowl nesting areas washed out, and effective planning impossible. In low water years, the wetlands receive only the tailwaters of irrigation projects. Water quantity is unpredictable while water quality becomes progressively poor. At a recent public briefing, the Interior Department's special irrigation drainage program coordinator ranked Stillwater NWR as a top priority-- possibly second only to the infamous Kesterson NWR-- in terms of threats from irrigation-derived contamination. A solution to this contamination problem, which was not recognized as a problem when the compact was negotiated, may be made more difficult by ratification of the compact. The compact will limit the flexibility of state and federal governments in designing a remedy.

Any effort at settlement should endeavor to establish a water right-- for uncontaminated water-- for these wetlands. Such a water right need not necessarily come at the expense of an existing water user. Rather an adequate water right may be realized from improvements to the existing water allocation and delivery system that is both wasteful and mismanaged.

The adverse impacts to Pyramid Lake, in particular the fisheries, that will result from ratification of the interstate compact by S. 2457 are contrary to the Nation's fundamental environmental charter and our policies regarding threatened and endangered species. In enacting NEPA, Congress declared that it was the policy of the nation to serve "as trustee of the environment for succeeding generations." 42 USC 4331 (b)(1). Subsequently, in enacting the Endangered Species Act, Congress specifically found that certain species of fish "have been so depleted in numbers that they are in danger of, or threatened with, extinction," and pledged "to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction..." 16 USC secs. 1531 (2) (4). Given the impacts that ratification is likely to have, and the lack of study into the environmental impact of this action, we submit that the compact cannot be squared with the above-mentioned principles set forth by Congress.

Ratification of the compact will do more than directly impact the environment and conflict with prior Congressional policies. It will undoubtedly result in increased litigation involving the ESA. There is a real likelihood, for example, that the compact imposes duties on the Secretary of the Interior that are in direct conflict with his obligations under the ESA.

In closing, we wish to present to the Subcommittee a selection of issues present in the Truckee-Carson-Tahoe region that serve to illustrate the breadth and complexity of the problems found in the Truckee-Carson region. These issues also inherently are attached to S. 2457 and, therefore focus attention on the need for a negotiated settlement:

- **In General--** "[I]t is generally understood that the situation here presents one of the most complex and difficult series of resource management problems in the country involving tribal, irrigation, municipal and industrial, and wildlife interests, among others." Cecil Andrus, Secretary of Interior, in letter to Director of OMB on Interior's opposition to compact, May 25, 1979.
- **Fisheries--** Reliance of cui-ui and Lahontan cutthroat trout on adequate water delivered in a timely manner in order to allow the species to reproduce and survive.
- **Municipalities--** The Cities of Reno-Sparks presently do not require water metering thus making monitoring and water conservation impossible.
- **Irrigation--** The Truckee-Carson Irrigation District (TCID) has repeatedly and willfully violated the operating criteria and proceedures for the Newlands project. While Bureau of Reclamation has directed TCID to comply, the Bureau has yet to penalize TCID for these unauthorized releases.
- **Wetlands--** Vital wetlands are the orphans of the region, relying on hand-outs of water from the wastewaters of irrigation projects. When water is delievered it is often too much, too contaminated, or too late.

ALTERNATIVE TO S. 2457

There is an alternative to S. 2457. Senator Laxalt advanced the concept of settlement legislation in S. 1558. After much negotiation, the parties have narrowed, but not completely eliminated, their differences. The enormous amount of data and expertise generated by this process should not be squandered.

The settlement process should be rejuvenated and the parties brought back to the negotiating table. Utilizing methods gleaned from labor negotiations and environmental mediation, these parties must be brought to the table recognizing that there is simply not enough water in this arid western region for "business as usual." Water conservation and the concept of an "acceptable shortage" will have to be part of any effective solution. The Department of Interior, representing the interests of the Bureau of Indian Affairs, Bureau of Reclamation, and Fish and Wildlife Service, should have an equal role in these negotiations. Settlement, not litigation or outdated compacts, offers the avenue to equitable allocation of the scarce water resources in the Lake Tahoe, Truckee River, Carson River, and Walker River basins.

This interest in achieving wise water management in the arid west is not limited to environmental/conservation groups. At a recent meeting of the Western Governors Association (WGA) a plan was adopted that called for "the realignment of federal, state, and local laws to encourage conservation and the reallocation of existing water supplies in those regions where the availability of water determines economic health" (July 11, Washington Post, 1986, A18).

We ask that this Subcommittee not approve S. 2457. As an alternative, Congress should direct the State of California and Nevada, together with the federal government to continue efforts to achieve a settlement which respects the interests of the federal government, endangered species, the Indian tribes, and the private water users of the Lake Tahoe and the Truckee-Carson-Walker river basins.

National Audubon Society
NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

July 31, 1986

The Honorable Orrin Hatch
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

RE: California-Nevada Interstate Compact
Request by Subcommittee to address questions
presented by Senators Hatch, DeConcini and
Grassley.

Dear Chairman Hatch:

In response to your letter of July 16, 1986, I enclose responses to the questions on the California-Nevada Interstate Compact on behalf of the undersigned. We are grateful for the opportunity to present these additional comments before the Subcommittee.

Respectfully submitted,

Whitney Tilt

Whitney Tilt

WCT:0266t

On behalf of:

Defenders of Wildlife
Environmental Defense Fund
Environmental Policy Institute
Natural Resources Defense Council
National Audubon Society
Northern California Council of the Federation of Fly Fishers
Sierra Club

California-Nevada Interstate Compact

Response to questions presented by members of the
Senate Committee on the Judiciary, Constitution Subcommittee

July 31, 1986

QUESTION 1 -- You have charged that this compact is in violation of the Clean Water Act, the Endangered Species Act and several state environmental quality review acts among others. Could you be more specific and elaborate on these points?

RESPONSE 1 -- First, by way of clarification, we would like to point out that our testimony does not charge that this compact is in violation of these statutes. Page 3 of our testimony states:

> The compact is obsolete, and little or no analysis has been undertaken to determine impacts arising from ratification of the compact. Furthermore,

> the compact, ratified by the states in 1970, has not been reviewed under, and made consistent with the policies of the Clean Water Act, Endangered Species Act, National Environmental Policy Act, and state environmental quality review acts. (emphasis added).

The compact was negotiated prior to the passage and implementation of any of the above named statutes. Since that time, the United States has honed its environmental policies through the passage and implementation of the National Environmental Policy Act of 1969 (NEPA), Federal Water Pollution Control Act Amendments of 1972 and 1977 (FWPCA), and the Endangered Species Act of 1973 (ESA). We do not believe that Congress should approve this sixteen-year-old interstate water compact, particularly as it purports to bind the interests of the United States and its wards and has not been shown to be consonant with the major environmental legislation of the 1970's.

National Environmental Policy Act

NEPA is a full disclosure law. It requires that all major federal actions significantly affecting the quality of the human environment be accompanied by a detailed impact statement to aid the agency's decisionmaking processes and to advise other interested agencies and the public of the environmental consequences of planned federal action. While the California-Nevada Interstate Compact may not, in and of itself, constitute a "major federal action," it is clear that the compact will significantly affect federal interests.

Beyond the requirement contained in §102(2)(C) to prepare an EIS, NEPA requires all federal agencies to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves conflicts concerning alternative uses of available resources." §102(2)(E). This requirement, like the requirement to prepare a detailed environmental impact statement under §102(2)(C), seeks to ensure that each agency decisionmaker has before him or her all possible approaches to a particular project. Only in this fashion is it likely that the most intelligent and optimally beneficial decision will eventually be made. Regulations promulgated by the Council on Environmental Quality require that agency consideration of environmental factors occur throughout the decisionmaking process and that preparation of an EIS occur at the earliest possible time in the decisionmaking chronology.

The purpose of the proposed compact is to resolve decades of conflict. Compliance with NEPA will assure that the parties to any agreement, as well as the general public and interested federal and state agencies, have full disclosure of the environmental consequences of various approaches to implementing the compact's provisions. The application of NEPA to this legislation will assure that critical information is gathered on this extremely complex ecosystem -- information which is now sparse to non-existent. For example, studies including Bureau of Reclamation's operating model for Pyramid Lake and Fish and Wildlife Service's work on establishing minimum survival levels for the cui-ui have never been applied against the allocations provided by the compact. Potentially affected habitats include Stampede, Boca and Lahontan Reservoirs, Truckee and Carson Rivers, Pyramid Lake, several wildlife refuges and wildlife management areas, not to mention the endangered cui-ui and threatened Lahontan cuttroat trout. The future water needs of Reno/Sparks and the irrigating needs of industry and agriculture are also involved.

Endangered Species Act

It is clear, that the proposed compact does not provide sufficient priority and resources to ensure the continued existence of the two listed species. Though the cui-ui was listed in 1967 after passage of the Endangered Species Preservation Act of 1966, the compact clearly fails to recognize the importance of listed species while further attempting to bind the federal government, steward of endangered species, to state and local decision makers.

Article VI (B) (4) allocates water which is expressly subordinated to "all existing beneficial use of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law." Missing is beneficial use of water for fisheries, especially endangered and threatened species. Although Article XIII of the compact states that the "use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest... and is, therefore, beneficial," it is clear that the interests of threatened and endangered species are subordinate to other beneficial uses of water under this compact.

In enacting the Endangered Species Act, Congress specifically found that certain species of fish "have been so depleted in numbers that they are in danger of, or threatened with, extinction," and pledged "to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction." 16 USC secs. 1531 (a)(2)&(4). The Supreme Court ruling on the intent of Congress in assigned priorities to endangered species and other uses of their habitat in TVA v. Hill found that "Congress intended endangered species to be afforded the highest of priorities." 437 U. S. at 174. The compact, on the contrary, makes endangered species protection efforts a secondary priority.

Clean Water Act

The objective of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Yet, at Stillwater National Management Area, the terminus of the Carson River and of the diverted waters of the Truckee River, water quality is a serious problem. High levels of the hazardous trace element selenium have been recently reported in the Paiute drain. Arsenic and mercury contamination are also a problem in area waters. Indeed, mercury levels in fish from the management area have been recorded at four times the maximum safe level for human consumption. The Interior Department's Special Irrigation Drainage Coordinator has identified Stillwater as likely to have the second most serious contamination problem of all the known areas under study by the Interior Department.

Clearly the objective of the Clean Water Act is a long way from being met in the Carson annd Truckee River basins. Meeting that objective is likely to take some novel and creative approaches to water management. The flexibility to design such approaches may be impaired as a result of the fixed allocations prescribed by the compact. Rather than cast those allocations in concrete before we have determined what measures are necessary to restore the quality of the seriously degraded waters of the area, we ought first to determine what measures can achieve that result, and then ascertain whether the compact, or some modification of it, can facilitate those measures.

QUESTION 2 -- Has the EPA or U.S. Park Service (Department of Interior) done any studies on this matter? What do they say?

RESPONSE 2 -- To the best of our knowledge, no studies have been conducted by the Bureau of Reclamation or the Fish and Wildlife Service (Department of Interior) on the effects of the compact on the environmental quality and fish and wildlife values of the Truckee/Carson/Walker River region. As we stated in our testimony:

> In the years since 1971, our knowledge of water management analysis, endangered species protection, and water conservation techniques has advanced light years... Cursory evaluation of fish and wildlife values in the compact suggests that water availability to the Lahontan Valley wetlands and the Pyramid Lake fish resources will be reduced by the establishment of additional municipal, industrial, and agricultural water rights. However, even though the Bureau of Reclamation and Fish and Wildlife Service have access to sophisticated computer simulation models to evaluate various water management scenarios, the effects of the compact on Pyramid Lake fisheries have not been evaluated. At minimum, this Subcommittee should defer action on this bill pending completion of this elementary impact analysis.

QUESTION 3 -- You maintain that the ratification of the compact would result in, among other things, the loss of two species of fish found only in that area. Besides the loss of the fish, what other effects, if any, would result?

RESPONSE 3 -- The cui-ui, listed as endangered, is found only in Pyramid Lake. The Lahontan cutthroat trout (LCT), listed as threatened, is highly dependent on the Truckee/Carson and Pyramid Lake system, but is also found in the Humboldt River system.

The major focus of our testimony, and keystone of our opposition, is the need for an comprehensive approach to water management in this region. The cui-ui and LCT are just two of the issues to be kept in mind. Others include:

- **Paiute Indian Tribe--** Vital importance of cui-ui and Lahontan cutthroat trout to the Pyramid Lake tribe's culture and economy. To sacrifice the fish is to sacrifice the Tribe's heritage and future.
- **Municipalities--** The Cities of Reno-Sparks have burgeoning water needs, yet they presently do not require water metering. Water conservation and monitoring are, therefore, next to impossible. The ability of existing wastewater treatment plants to adequately treat present and future wastewater needs is uncertain, with obvious impacts on health, recreation, land values, and fish and wildlife.
- **Irrigation--** The Truckee-Carson Irrigation District (TCID) is one of the largest water users in the area and benefactor of the federal government's largess. Yet TCID has repeatedly and willfully violated the operating criteria and procedures for the Newlands project. While the Bureau of Reclamation has directed TCID to comply, the Bureau has yet to penalize TCID for these unauthorized releases.
- **Wetlands--** Vital wetlands are the orphans of the region, relying on hand-outs of water from the tailwaters of irrigation projects. When water is delivered, it is often too much, too contaminated, or too late. Valuable recreation and wildife habitat is at risk.

Without a negotiated settlement of this dispute that examines these and other resource issues, the potential impacts to the region are incalculabe. The passage of any interstate water compact should be made contingent on the successful resolution of these issues.

QUESTION 4 -- Do you think Congress should ratify a compact drafted almost 20 years ago before the environmental era -- that is, before the Endangered Species Act, NEPA and the rest of our modern enviornmental protection framework -- without Congress examining carefully its impact on the environment.

RESPONSE 4 -- In a word, NO. Our entire testimony and the answers to the Subcommittee's questions herein, all point directly at the fact that Congress should not be expected to ratify a compact drafted almost 20 years ago merely for the sake of convenience. Ratification of any compact should occur only after Congress has carefully examined its impact on the environment.

QUESTION 5A -- If I understand your testimony correctly, you are not entirely opposed to a compact dealing with the water resource and environment problems in this region, as long as it is part of comprehensive solution to the various water claims and environment issues now in dispute. Is that correct?

RESPONSE 5A -- We are in support of the compact mechanism so long as it provides for sound water management in an effort to resolve water allocation conflicts and to distribute benefits among the parties including the Pyramid Lake and Walker River Paiute Tribe, Cities of Reno/Sparks, the Truckee Carson Irrigation District, and the interests of the federal government. Any water compact between California and Nevada should not subordinate the interests of the federal government to state and local interests. Rather the federal government as trustee for the Tribes and endangered species should have full representation.

QUESTION 5B -- And do you feel such a comprehensive solution is achievable at this point?

RESPONSE 5A -- Yes, there is a comprehensive solution to S. 2457. Senator Laxalt advanced one possible avenue when he introduced the concept of settlement legislation in S. 1558. After much negotiation, the parties have narrowed, but not completely reconciled, their differences. The enormous amount of data and expertise generated by this process should not be squandered. If the parties find that they are too tainted to work together for a settlement, then new representatives should be named. Congress could also consider imposing a time limit on the settlement process and identify incentives to aid the settlement process (i.e., conditions of TCID's payments to the federal government for the Newlands Project).

The settlement process should be rejuvenated and the parties brought back to the negotiating table. A variety of measures could, in combination, resolve many of the fisheries and water quality problems in the area. More efficient utilization of water by irrigators and municipalities, together with retirement of marginal lands, could save more water for fishery presevation and other purposes at less expense than the alternative of building new storage capacity. The parties should fully explore such alternatives as a constructive way of ending the long and bitter battles that have divided them heretofore.

Senator LAXALT. May the record indicate that Senator Grassley was here before the panel's testimony, and that he left a statement which should be filed for the record and shall now be so filed, if there is no objection.

[Prepared statement follows:]

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

I want to thank you for holding this hearing on the California-Nevada Interstate Water Compact.

Although both the California and Nevada legislatures approved the Compact in the early 1970's, Congress has never ratified it. Nevertheless, both states have, thus far, abided by the Compact's provisions.

The ratification of this Compact is an important subject that deserves a thorough examination. Along with considering the merits of the Compact, there are important questions that must be resolved concerning the effect this Compact will have on the federal government, the Pyramid Lake Indian Tribe, and fisheries in the area.

I look forward to the testimony of today's distinguished witnesses who I am confident will shed some light on this issue.

Thank you Mr. Chairman.

Senator LAXALT. In addition to that, he had various questions that he wanted to address to Mr. Marchant, and those questions will be addressed to Mr. Marchant by the committee, as well as some questions to be addressed to the Audubon Society.

We will continue now with panel three, which consists of Joe Gremban, chairman of the Sierra Pacific Power Co.; Ed Pine, Carson-

Truckee Water Conservancy; and Lyman McConnell. I understand David Fulstone is here for the purpose of introducing him, is that correct, or are you going to testify for him, David?

Mr. FULSTONE. I will testify, Mr. Chairman.

Senator LAXALT. Will everybody please be seated? In what capacity does Mr. Fulstone appear?

Mr. FULSTONE. Mr. Chairman, I am Dave Fulstone, president of the Nevada Farm Bureau, and would like to share part of my time with Lyman McConnell, who is the project director of the Truckee-Carson Irrigation District.

Senator LAXALT. Very well; that will be very satisfactory.

Let us start proceeding, then, with Mr. Gremban.

STATEMENT OF A PANEL CONSISTING OF: JOE L. GREMBAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SIERRA PACIFIC POWER CO.; EDWARD L. PINE, MEMBER, BOARD OF DIRECTORS, CARSON-TRUCKEE WATER CONSERVANCY DISTRICT; AND DAVID H. FULSTONE, II, PRESIDENT, NEVADA FARM BUREAU FEDERATION, ACCOMPANIED BY LYMAN McCONNELL, PROJECT MANAGER, TRUCKEE-CARSON IRRIGATION DISTRICT

Mr. GREMBAN. Mr. Chairman, members of the committee, my name is Joe L. Gremban. I am the chairman of the Board and chief executive officer of Sierra Pacific Power Co. My testimony today is in full support of the bill as it would read if it included the changes set out by Edward L. Pine, which would make the compact effective by its terms.

For the convenience of the committee, those changes are shown in exhibit A attached to my prepared statement.

Northwest Nevada, the area affected by this legislation, is an arid region. All facets of life and the economy in the area are dependent upon the beneficial use of the waters of the Truckee, Carson, and Walker Rivers and their tributaries.

Literally billions of dollars have been expended on homes, businesses, plants, agriculture, schools, parks, playgrounds, and other facilities in reliance on the water provided by those rivers.

All three rivers rise in the Sierra Nevada Mountains and flow generally easterly to landlocked termini in the Nevada desert. The Truckee River flows out of Lake Tahoe and terminates in Pyramid Lake. The Carson River flows through Lahontan Reservoir and terminates in the Carson Sink, some 40 miles east of Pyramid Lake. The Walker River consists of two main branches, east and west Walker, which unite in Mason Valley and terminate in Walker Lake.

In order to avoid litigation in the U.S. Supreme Court, Nevada and California have chosen to apportion between them the waters of the Truckee, Carson, and Walker Rivers by interstate compact.

After 13 years of negotiations, the proposed compact was adopted by the State of California in 1970 and the State of Nevada in 1971. Since 1971, both States have adhered to the provisions of the compact. See *United States* v. *Nevada.*

The major purposes of the compact are to provide for the equitable apportionment of water between the two States; to promote interstate comity, and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly, integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River and Walker River basins—California-Nevada interstate compact, article I.

As the purveyor of water in the general Reno-Sparks area, Sierra Pacific presently serves a population of approximately 200,000 persons with water for their municipal, industrial and domestic needs.

Eighty-five percent of the water supplied is provided through the use of Truckee River water and water storage rights. Fifteen percent of the water supplied is provided from a very limited supply of groundwater in the Truckee Meadows area.

The Truckee River water rights have been acquired in reliance on the terms of the California-Nevada interstate compact which has been informally applied and respected by the two States.

Recently, attacks by local government interests have intensified and we fear the courts will ignore this informal agreement and order the two States to issue permits in excess of compact allocations. See *Nevada and Westergard* v. *Godeche, et al.*, a copy of which is attached hereto as Exhibit B.

Our concern is for the health and safety of the existing population, as well as development to serve future generations. If the compact were reopened or made the subject of additional litigation, the existing population would face shortages in their existing water supply.

Similarly, Sierra has been unable to obtain desperately needed storage for a dry year water supply to serve existing and future customers. The Pyramid Lake Paiute Tribe has encouraged Sierra to pursue sources of water in California other than the Stampede Reservoir.

The California mountain counties, on the other hand, have attacked Sierra for pursuing these sources of water due to the uncertainties of their future water supplies as the result of lawsuits brought by the Pyramid Lake Tribe.

The company is therefore put in a lose-lose situation, being unable to pursue Stampede Reservoir storage due to the court decision in *Truckee-Carson Irrigation District* v. *the Secretary,* and unable to pursue alternative sources of water due to the tribe's litigation with California.

Division of the water between the two States is critical to assure water supply for existing and future development in the Truckee Meadows. The waters of each of the rivers apportioned in the compact have been the subject of comprehensive water adjudication brought by the United States in U.S. district court for the District of Nevada.

In 1913, the United States filed an action to determine the relative rights of all parties to the water of the Truckee River in Nevada. That action, entitled *United States* v. *Orr Water Ditch Company, et al.*, was ended with the entry of final judgment in 1944.

The United States initiated similar action on the Carson River in 1925; that action entitled *United States* v. *Alpine Land and Reservoir Company, et al,* was concluded in 1983.

On July 3, 1924, the United States commenced an action to quiet its title to water on the Walker River and to determine the relative rights of the parties to the suit to the waters of that river. That action, entitled *United States* v. *Walker River Irrigation District*, ended in 1939.

These comprehensive water adjudications have not ended the conflicts over water. This has been especially true on the Truckee River. For at least the last 15 years, the conflicts on the Truckee have been the subject of extensive study and massive litigation, whose final decisions have been inconclusive.

Additional litigation is underway, and more is anticipated. A description of the pending litigation is attached as exhibit C.

The cost of the litigation to the parties and judicial system has been staggering. Much of the litigation remains unresolved, and will continue. More importantly, after nearly 15 years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno, Sparks, and Washoe County is not assured.

Cutthroat trout and cui-ui fish remain listed as threatened and endangered, respectively. The manner in which the Newlands project will be operated remains undetermined, and additional inconclusive and expensive litigation is probable.

Last October, most of the parties which will provide testimony today came to Congress with Senate bill 1558, which proposed a framework for resolution of all outstanding litigation.

Sierra Pacific supported that legislation and is firmly committed to final settlement of all issues related to the Truckee River. Unfortunately, all of our efforts regarding S. 1558 were lost, due to a vote by the Pyramid Lake tribal members that they would not support that legislation and would only negotiate within certain parameters.

The parameters that were set out by the tribe appeared to be a complete reversal of their earlier position and were totally unacceptable to Sierra Pacific. In spite of these setbacks, Sierra Pacific has diligently attempted to reach a settlement with the tribe, and based upon our discussions with the tribe to date, we firmly believe that all issues can be resolved.

One issue remains a major stumbling block to this resolution. That issue is before you today—the California-Nevada interstate compact. No settlement can be accomplished without division of the waters between the two States.

Sierra Pacific Power Co. fully supports the California-Nevada interstate compact. The company is committed to reach a mutually agreeable settlement of all unresolved water supply items, and we stand ready to assist Congress in addressing the tribe's concerns without impacting the integrity of the compact.

The people of both Nevada and California urgently need the certainty provided by the compact's allocation.

Thank you.

[The prepared statement and responses to questions follow:]

PREPARED STATEMENT OF JOE L. GREMBAN

I. INTRODUCTION

Mr. Chairman and members of the Committee, my name is Joe L. Gremban. I am the Chairman of the Board and Chief Executive Officer of Sierra Pacific Power Company. My testimony today is in full support of the Bill as it would read if it included the changes set out by Edward L. Pine which would make the Compact effective by its terms. For the convenience of the Committee, those changes are shown on Exhibit A attached hereto.

A. Sierra Pacific Power Company.

Sierra Pacific Power Company (Sierra Pacific) is a subsidiary of Sierra Pacific Resources which is a Nevada corporation and is the successor to the Truckee River General Electric Company. It is a public utility engaged in the purchase, transmission, distribution and sale of water in the Cities of Reno and Sparks, Nevada, and in portions of Washoe County, Nevada.

It is also engaged in the generation, purchase, transmission distribution and sale of electric energy in the States of Nevada and California. Sierra Pacific has four hydroelectric facilities on the Truckee River in both Nevada and California. The water used to operate those facilities comes from the Truckee River.

B. Northwest Nevada - The Area Affected by This Legislation.

Northwest Nevada, the area affected by this legislation is an arid region. All facets of life and of the economy in the area are dependent upon the beneficial use of the waters of the Truckee, Carson and Walker Rivers and their tributaries. Literally billions of dollars have been expended on homes, businesses, plants, agriculture, schools, parks, playgrounds and other facilities in reliance on the water provided by those rivers.

All three rivers rise in the Sierra Nevada mountains and flow generally easterly to landlocked termini in the Nevada Desert. The Truckee River flows out of Lake Tahoe and terminates in Pyramid Lake. The Carson River flows through Lahontan Reservoir and terminates in the Carson Sink some 40 miles east of Pyramid Lake. The Walker River consists to two main branches, East and West Walker, which unite in Mason Valley and terminate in Walker Lake.

C. The Importance of the Compact to the Reno-Sparks Area.

In order to avoid litigation in the United States Supreme Court, Nevada and California have chosen to apportion between them the water of the Truckee, Carson and Walker Rivers by interstate Compact. After 13 years of negotiations, the proposed Compact was adopted by the State of California in 1970, and the the State of Nevada in 1971. Since 1971, both states have adhered to the provisions of the Compact. See, United States v. Nevada, 412 U.S. 534, 537-39 (1973).

The major purposes of the Compact are:

> [T]o provide for the equitable apportionment of water between the two states; to promote interstate comity and to further inter-governmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River and Walker River Basins. California-Nevada Interstate Compact, Art. I.

As the purveyor of water in the general Reno-Sparks area, Sierra Pacific presently serves a population of approximately 200,000 persons with water for their municipal industrial and domestic needs. Eighty-five percent (85%) of the water supplied is provided through the use of Truckee River water and water storage rights. Fifteen percent (15%) of the water supplied is provided from a very limited supply of ground water in the Truckee Meadows area.

The Truckee River water rights have been acquired in reliance on the terms of the California-Nevada Interstate Compact which has been informally applied and respected by the two states. Recently, attacks by local development interests have intensified and we fear the courts will ignore this informal agreement and order the two states to issue permits in excess of Compact allocations. See, Nevada and Westergard v. Godeche, et al., First Judicial District Court, State of Nevada, County of Douglas, Civ. No. 6479, a copy of which is attached hereto as Exhibit "B".

Our concern is for the health and safety of the existing population as well as development to serve future generations. If the Compact were reopened or made the subject of additional litigation, the existing population could face shortages in their existing water supply. Similarly, Sierra has been unable to obtain desperately needed storage for a dry year water supply to serve existing and future customers. The Pyramid Lake Paiute Tribe has encouraged Sierra to pursue sources of water in California other than the Stampede Reservoir. The California mountain counties, on the other hand, have attacked Sierra for pursuing those sources of water due to the uncertainties of their future water supplies as the result of lawsuits brought by the Pyramid Lake Tribe. The Company is therefore put in a lose-lose situation, being unable to pursue Stampede Reservoir storage due to the Court decisions in Truckee Carson Irrigation District v. Secretary, Civ. No. R-74-34-BRT (D. Nev. 1983), Aff'd, 742 F.2d 1527 (9th Cir. 1984) cert. den., 53 U.S.C.W. 3867 (June 11, 1985) and unable to pursue alternative sources of water due to the Tribe's litigation with California.

The division of the waters between the two states is critical to assure a water supply for existing and future development in the Truckee Meadows.

D. The Continuing Conflict Over Water.

The waters of each of the rivers apportioned in the Compact have been the subject of comprehensive water adjudications brought by the United States in the United States District Court for the District of Nevada. In 1913, the United States filed an action to determine the relative rights of all parties to the waters of the Truckee River in Nevada. That action, entitled United States v. Orr Water Ditch Co. et al. (Equity No. A-3) was ended with the entry of final judgment in 1944.

The United States initiated a similar action on the Carson River in 1925. That action, entitled United States v. Alpine Land & Reservoir Co et al., D-183-BRT was concluded in 1983. See, United States v. Alpine Land & Reservoir Co., 503 F.Supp. 877 (D.Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), cert. den. 104 S.C. 193 (1983).

On July 3, 1924, the United States commenced an action to quiet its title to water on the Walker River and to determine the relative rights of the parties to the suit to the waters of that river. That action, entitled United States v. Walter River Irr. Dist., No. C-125 ended in 1939. See, United States v. Walker

River Irrigation District, 11 F.Supp. 158, (D.Nev. 1935); 14 F.Supp. 10 (D.Nev. 1935), aff'd in part and rev'd in part 104 F.2d 334 (9th Cir. 1939).

These comprehensive river adjudications have not ended the conflicts over water. This has been especially true on the Truckee River. For at least the last fifteen years, the conflicts on the Truckee have been the subject of extensive study and massive litigation whose final decisions have been inconclusive. Additional litigation is underway and more is anticipated. A description of the pending litigation is attached as Exhibit "C".

The costs of this litigation to the parties and to the judicial system have been staggering. Much of the litigation remains unresolved and will continue. More importantly, after nearly fifteen years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured, the cutthroat trout and cui-ui fish remain listed as threatened and endangered respectively, the manner in which the Newlands Project will be operated remains undetermined and additional inconclusive and expensive litigation is probable.

Last October, most of the parties which will provide testimony today came to Congress with S. 1558 which proposed a framework for resolution of all outstanding litigation. Sierra Pacific supported that legislation and is firmly committed to final settlement of all issues related to the Truckee River. Unfortunately all of our efforts regarding S. 1558 were lost due to a vote by the Pyramid Lake tribal members that they would not support that legislation and would only negotiate within certain parameters.

The parameters set out by the Tribe appear to be a complete reversal of their earlier position and was totally unacceptable to Sierra Pacific. In spite of these set backs, Sierra Pacific has diligently attempted to reach a settlement with the Tribe and based upon our discussions with the Tribe to date we firmly believe that all issues can be resolved. One issue remains the major stumbling block to this resolution. That issue is before you today - the California-Nevada Interstate Compact. No settlement can be accomplished without division of the waters between the two states. It is our firm belief that most, if not all of the problems the Tribe has with the Compact can be resolved if the Tribe's emotional response to the Compact were set aside in favor of an issue by issue approach. Most, if not all, of the Tribe's fears relative to the Compact are matters of interpretation which can be resolved by Congress without impacting the integrity of the Compact. We urge Congress to address the Tribe's concerns through statements in the committee report clarifying Congress' understanding of the Compact and without reopening the Compact with the two state legislatures.

CONCLUSION

Sierra Pacific Power Company fully supports the California-Nevada Interstate Compact. The Company is committed to reach a mutually agreeable settlement of all unresolved water supply issues and we stand ready to assist Congress in addressing the Tribe's concerns without impacting the integrity of the Compact. The people of both Nevada and California urgently need the certainty provided by the Compact's allocations.

EXHIBIT "A"

Omit the language of Section 2 and add:

> Sec. 2. The following provisions of the Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:
>
> Article V, Section D
> Article V, Section F
> Article VI, Subsection B.1
> Article VI, Subsection B.3
> Article VI, Subsection B.4
> Article VI, Section D
> Article VII, Section A
> Article VII, Section B
> Article VII, Section C
> Article VII, Section D
> Article VII, Section E
> Article VIII, Subsection A.4(b)
> Article VIII, Subsection B.1
> Article VIII, Subsection B.5

EXHIBIT "B"

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA ex rel.
ROLAND D. WESTERGARD,
Nevada State Engineer,

Plaintiff,

vs.

ROY GODECKE, CHARLES MENELEY,
HAROLD P. DAYTON, as Members
of the DOUGLAS COUNTY BOARD
OF COMMISSIONERS, and all their
agents, employees, and the
DOUGLAS COUNTY DEPARTMENT OF
PUBLIC WORKS; LAKE TAHOE LAND
COMPANY, INC., a Nevada corporation, and FERDIE SIEVERS,
Individually, and as President
of LAKE TAHOE LAND CO., INC.;
and DOES One through Five,

Defendants.

No. 6479

FILED
NO. ______
'74 JUL 11 PM 1:24
EARNHART W. THR
CLERK
BY ______
DEPUTY

DECISION AND ORDERS ON
MOTION FOR PRELIMINARY INJUNCTION

THIS ACTION was commenced by the Plaintiff through the Attorney General ROBERT LIST by his Deputy ROSS de LIPKAU pursuant to Rule 65 of the Nevada Rules of Civil Procedure governing Injunctions, and included the verified initial Complaint of Plaintiff, an Affidavit of ROLAND D. WESTERGARD in support thereof, together with the Motion for Preliminary Injunction. On June 7, 1974, that same date, the undersigned District Judge, concurrent with the execution of a Temporary Restraining Order, notified counsel for all Defendants as to the nature of the proceedings and set the Hearing on Preliminary Injunction to commence at 1:00 P.M., June 12, 1974, but rather than proceeding to the Hearing on Preliminary Injunction June 12, 1974, the Court, to avoid a multiplicity of proceedings and duplicious interrogation and evidence, but not limited thereto, ordered that additional defendants be joined in these proceedings (to avoid the very real potential of intervention motions and proceedings), and further ordered that the Complaint on file be amended to join said additional defendants, but not limited thereto. On June 14, 1974 an Amended Complaint was filed by Plaintiff naming the following additional Defendants: LAKE TAHOE LAND COMPANY, INC., a Nevada corporation, and FERDIE SIEVERS, Individually, and as President of LAKE TAHOE LAND COMPANY, INC., and DOES One through Five. This Court, by stipulation of all parties to this action, reset the Hearing on Preliminary Injunction to commence at 8:30 o'clock, A.M., Friday, July 5, 1974, and at said hearing Plaintiff was present in person, being represented by Special Deputy Attorney General ROSS de LIPKAU, all Defendants other than the LAKE TAHOE LAND COMPANY, INC., a Nevada corporation, and FERDIE SIEVERS, Individually, and as President of LAKE TAHOE LAND COMPANY, INC., were represented by Douglas County District Attorney HOWARD McKIBBEN, ESQ., and the remaining Defendants were represented by ROBERT MARSHALL, ESQ., of VARGAS, BARTLETT AND DIXON, LTD. Several witnesses testified during these proceedings including Plaintiff and Defendant FERDIE SIEVERS, but not limited thereto, and after the rendition of all the evidence, all counsel presented their arguments.* By stipulation of the parties at the outset of the hearing the case was dismissed as to ROY GODECKE, CHARLES MENELEY, and HAROLD P. DAYTON in their individual capacity. Counsel for all parties stipulated in open court to waive any time limitations respecting effective periods concerning Temporary Restraining Orders or Preliminary Injunctions.

Whereupon this Court renders the following Decision and Orders, respectively:

DECISION

In his first cause of action the Plaintiff, ROLAND D. WESTERGARD, states that he is the Nevada State Engineer, and is prosecuting this action pursuant to NRS 532.160; that he believes that the Douglas County Commissioners will imminently issue building permits for individual homes, apartment houses and condominiums on and within the Carson Valley side of Kingsbury Summit located within Summit Village and Tahoe Village Unit No. 1, Unit No. 2 and Unit No. 3 in Douglas County Nevada, unless appropriately restrained by Order of this Court; that these units, if built, will require a source of domestic water, and that the only available source of such water is from within the Lake Tahoe Basin; that to direct water from within the Lake Tahoe Basin for use outside said basin would be, and is, in violation of the CALIFORNIA-NEVADA INTERSTATE COMPACT (hereinafter Compact), said Compact being set forth in full in NRS 538.600 to 538.630, inclusive; that said Compact is a contract between the States of Nevada and California, and must be enforced by the two States until repudiated by their Legislatures or adopted, modified, or rejected by the Congress of the United States; that if so violated by Nevada, the State of Nevada would suffer irreparable injury "in that the good faith that has existed between Nevada and California since 1955 would be destroyed"; that if Nevada were required to violate the Compact, the people of the State of Nevada would be irreparably damaged; that the Compact must be rigorously adhered to as its importance is of vital interest to the orderly growth within the Lake Tahoe Basin, and to the people of Northern Nevada; that the Plaintiff would suffer irreparable injury if dwellings were to be built pursuant to building permits issued on the Carson Valley side of Kingsbury Summit, within Summit Village and Tahoe Village Unit No. 1, Unit No. 2 and Unit No. 3, prior to the developer securing a valid and legal water source for said dwellings; that because the outlet weir near Tahoe City, California (Article V, Subsection B and D of Compact), is not yet built, there can only be a total diversion within the entire Lake Tahoe Basin, by Nevada and California users, of 19,000 acre-feet annually without effecting downstream rights. Should there be a diversion of more than 19,000 acre-feet annually, then those individuals or entities who have rights pursuant to United States of America v. Orr Water Ditch Co., et al., In Equity No. A-3, would have such rights infringed upon and would be irreparably injured; that Plaintiff, STATE OF NEVADA, has no adequate remedy at law, etc. The second cause of action of said Amended Complaint is against Defendants LAKE TAHOE LAND COMPANY, INC., FERDIE SIEVERS, Individually, and as President of LAKE TAHOE LAND COMPANY, INC., and it too requests injunctive relief against said Defendants until "the Nevada State Engineer grants a favorable review pursuant to NRS 117.027 (3) and NRS 278.420(7) prior to commencement of said construction on the dwellings". The third cause of action, which, as the second cause of action, incorporates substantially all of the allegations of the first cause of action, is with reference to Defendant EARNHART W. THRAN, Douglas County Clerk, and requests that THRAN, Individually and as Douglas County Clerk, together with his servants and agents, "be temporarily enjoined from filing "final maps" and be ordered to show cause why a permanent injunction should not be granted" unless and until "such time as he is presented a favorable review granted by the Nevada State Engineer pursuant to NRS 117.027 and/or NRS 278.420, subsection 7".

Substantial factual and legal issues arise the result of the more than one-half day's hearing, but all parties through their respective counsel did at the conclusion of said proceedings, July 5, 1974, enter into a substantial STIPULATION in this cause, which is set forth as follows:

"A. The final maps of the following subdivisions were recorded with the Douglas County Recorder's Office on the dates and under the file numbers indicated below:

(1) Summit Village Unit No. 1, final map filed September 17, 1968, under document No. 42231.

(2) Summit Village Unit No. 2, final map filed December 7, 1971, under document No. 43419.

(3) Tahoe Village Unit No. 1, final map filed December 7, 1971, under document No. 55769.

(4) Tahoe Village Unit No. 2, final map filed January 22, 1973, under document No.__________.

(5) Tahoe Village Unit No. 3, final map filed January 22, 1973, under document No. 63805.

B. The above maps contained all of the certification on the face thereof required by law to be placed on final subdivision maps.

C. Permitted uses of living unit sites within all of the above subdivisions include single family dwellings and multiple family units, consisting of duplexes, triplexes, fourplexes and so forth. Condominium units are not permitted except on the filing of approved condominium maps. The above maps do not constitute condominium maps.

D. Deleted from proposed STIPULATION by agreement of counsel with the Court to make this factual determination respecting the approximate total number of living units, or lots, within the above subdivisions.

E. Physical installations for Summit Village Units 1 and 2 are as follows:

(1) Buildings (as revealed from building permits issued by Douglas County):

18 single family dwellings
19 duplexes
2 fourplexes
1 - 24 unit condominium (subject to the Supreme Court decision in matter No. 7704).

(2) Waterlines: All waterlines and fire hydrants have been installed since approximately 1967.

(3) Sewer lines: All sewage collector lines have been installed since approximately 1967. The sewage interceptor line to service the sewage collector lines within Summit Village Units 1 and 2 is presently being installed with a projected completion date of September 1, 1974.

(4) Roads: All roads are installed.

F. Physical installations for Tahoe Village Unit 1 are as follows:

(1) Buildings (as revealed from building permits issued by Douglas County): 85 living units.

(2) Waterlines: All waterlines and fire hydrants

are now in the process of being installed with a projected completion date of September 1, 1974.

(3) Sewer lines: All sewer lines, including the main interceptor sewage line to service Unit 1, are presently being installed with a projected completion date of September 1, 1974.

(4) Roads: Under construction.

G. Physical installations for Tahoe Village Unit 2 are as follows:

(1) Buildings (as revealed from building permits issued by Douglas County): 58 living units.

(2) Waterlines: All waterlines and fire hydrants are now in the process of being installed with a projected completion date of September 1, 1974.

(3) Sewer lines: All sewer lines, including the main interceptor sewage line to service Unit 2, are presently being installed with a projected completion date of September 1, 1974.

(4) Roads: Under construction.

H. Physical installations for Tahoe Village Unit 3 are as follows:

(1) Waterlines: All waterlines and fire hydrants are now in the process of being installed with a projected completion date of September 1, 1974.

(2) Sewer lines: All sewer lines, including the main interceptor sewage lines to service Unit 3, are presently being installed with a projected completion date of September 1, 1974.

(3) Roads: Under construction.

I. The entire sewer system serving all of the above subdivisions constitutes a closed loop system; that is all sewage from living units within the subdivision is collected and returns to the Lake Tahoe Basin for processing through the Round Hill sewage plant; 88% of all living units within the above subdivisions flow sewage by gravity flow into the system with only 12% being pumped.

There exists little or no outside use of water in connection with the above subdivisions.

J. Deleted, by agreement of counsel, with the Court to make the factual determination concerning the outstanding bonded indebtedness, there having been substantial evidence offered in this regard.

K. Water and sewer facilities will be completed to all lots within all of the above subdivisions by September 1, 1974. Water facilities are an integral part of the water transmission distribution system of the Kingsbury Water Company. The Kingsbury Water Company draws its water from wells within the Tahoe Basin and from Lake Tahoe.

L. Bonds covering the above assessments have been sold by the District to the public.

M. Deleted by agreement of counsel, with the Court to determine the relevancy and materiality with respect to the following: "Construction of sewer facilities covering all of the above subdivisions was compelled by the Court Decree issued by Judge Thompson of the Federal District Court for the Northern District of Nevada in 1973".

N. All of the above subdivisions are within the certificated area covered by CPC No. 594 issued to the Kingsbury Water Corp. by the Nevada Public Service Commission and as described in second revised sheet PSCN No. 33 and second revised sheet PSCN No. 33A attached hereto.

Existing water permits issued to Kingsbury Water Corp. by the Nevada State Engineer's Office are as follows:

Certificate Number	Date	Source
21319	6-7-63	Lake Tahoe water
23017	3-11-66	Lake Tahoe water

The Lake Tahoe permits include as a place of use all of the above subdivisions.

O. The Kingsbury General Improvement District area encompasses all of the above subdivisons.

P. Nevada-California Interstate Compact has never been ratified by Congress (NRS 538.600)."

This Court ordered approval of the above STIPULATION and makes additional Findings of Fact as hereinafter set forth. That Defendant FERDIE SIEVERS, Individually, and as President of the LAKE TAHOE LAND COMPANY, INC., co-Defendants in this matter, began development in these general areas of the Kingsbury Grade during the years 1959 and 1960; that the units the subject of these proceedings, including Summit Village Units 1 and 2, and Tahoe Village Units 1, 2 and 3, are the only developed and where applicable, partially developed, subdivision units on the ridge of the entire Lake Tahoe Basin, including Nevada and California; that for example, with respect to Summit Village Units 1 and 2, there are scheduled 400 living units with a total of approximately 90 lots, with 10 to 12 proposed on the immediate outside of the Basin, or a total of 50 to 60 living units. With reference to Tahoe Village Unit No. 1, there are proposed approximately 90 living units, with approximately 70% outside of the immediate Basin, and with reference to Tahoe Village Unit No. 2, with a proposed approximate 23 lots, it is unrefuted that they are all within the Lake Tahoe Basin (a determination also made by the Tahoe Regional Planning Agency at the approval hearing in this matter); it is also undisputed that with reference to Tahoe Village Unit No. 3, there are a proposed 44 living units which are all outside of the immediate Basin; that the MORALES-NAIFY Lot No. 555, in the Summit Village subdivision, Douglas County, Nevada, is within Summit Village Subdivision Units 1 and/or 2, which are immediately adjacent to Tahoe Village Units 1, 2 and 3; that it is unrefuted in this record that the MORALES-NAIFY Lot No. 555 is without the Tahoe Basin; that Defendants SIEVERS and the LAKE TAHOE LAND COMPANY completed their master plan with reference to these subdivisions as early as 1964, but no later than 1966, and completed all of the procedures of the Tentative Map, the Final Maps, the recording of the Final Maps, and followed all of the applicable local, as well as State, requirements and TRPA requirements, but not limited thereto, with reference to said subdivisions; that all of these proposed living units are constructed and are to be constructed in the nature of a ski-complex commensurate with the surrounding "Heavenly Valley North" ski-complex or structure; that Defendants SIEVERS and LAKE TAHOE LAND COMPANY began the payment of assessments during the years 1964 and 1966 with reference to Summit Village Units 1 and 2, as "all lands were assessed" by the Kingsbury General Improvement District; that for example as well, with reference to the Kingsbury General Improvement District's Project No. 66-1, SIEVERS and/or the corporate Defendant have paid "close to One-Half Million Dollars, including interest," on account of the water facility assessment since the year 1966; that SIEVERS' and/or the LAKE TAHOE LAND COMPANY, INC., ability to make assessment payments and installments is dependant upon his, and its, ability to sell the dwelling units; that Defendant SIEVERS has heretofore posted $175,000.00 in cash "against a letter of credit of $250,000.00" on account of these subdivision projects; that all water used and to be used by the proposed subdivisions comes from the Lake Tahoe Basin and will be returned to the Lake Tahoe Basin by natural gravity through the closed sewer system to the Douglas County Sewer District No. 1 (an NRS 309.010, et seq. District), with the exception of minimal amounts used for outside lawn and shrubbery maintenance; that the sole exception to the gravity flow system is 12% thereof which is required to be pumped into said closed loop system; that there is no significant degree of difference in this manner of returning of the waters whether the living units are situate within or without the Basin; that of the proposed 350 to 400 living units in Tahoe Village Unit No. 1, 85 to 90 are substantially completed; that with reference to Tahoe Village Unit No. 3, there has been substantial utility construction heretofore completed, or in progress; that of the 50 to 60 Summit Village units that are outside of the Basin, 24 have been built. It is significant that any dwelling units heretofore built, or to be built, by SIEVERS and the LAKE TAHOE LAND COMPANY, INC., whether within or without the Basin, present an integrated and planned-unit set of subdivisions. Even if the Compact were the law, it would not have been the intent of either the California or Nevada Legislatures (not to mention the United States Congress) to unreasonably preclude the subject development. Again, both subdivisions are immediately adjacent to the Basin and virtually sit on or about the ridge.

Further, KEN KJER, who has been Chairman of the Kingsbury General Improvement District since January of 1972, and who is extremely familiar with the private facilities and improvements within the District, as well as the District's governmental physical facilities and improvements, testified that all of the proposed units and subdivisions of Summit Village as well as Tahoe Village, are within the boundaries of the Kingsbury General Improvement District (a district formed pursuant to NRS 318.010, et seq.), and this is a further Finding of Fact made by this Court; that the Kingsbury General Improvement District has an outstanding bonded indebtedness of approximately $5,500,000.00, a substantial portion of which has resulted from sewer, road and water improvements to the subject subdivisions; that relative to Summit Village Units 1 and 2 concerning District Bond Project No. 66-3, there were bonds issued and sold during the years 1966 and 1967 for water, sewer and the roads, with an original principal amount of $485,000.00 with a present balance of $320,000.00; that concerning District Bond Project No. 66-1, during the years 1966-67 there were bonds issued and sold for the installation of a main water transmission line in the original amount of $536,000.00, with a present balance of $352,000.00. To clarify this furtner respecting Project No. 66-1, there were several subdivisions assessed including the three units of Tahoe Village, the two units of Summit Village and the Kingsbury Village subdivision, and the Tahoe Village Units No. 1, 2 and 3 presently bear the burden of approximately $75,000.00 in assessments concerning this project; that the subject water system and distribution system administered by the Kingsbury Water Corporation certificated by the Public Service Commission of the State of Nevada, was built for all areas within the Kingsbury General Improvement District including, but not limited to, Tahoe Village and Summit Village; that District Bond Project No. 73-2, administered during the years 1973-74, was for the purpose of installation of water, drainage, roads, sewers and parking areas for Tahoe Village Units 1, 2 and 3, with an original amount of $1,913,000.00 and a present balance of $1,913,000.00, and of course the bonds were sold July of 1973; that on account of Project No. 73-2, the Kingsbury General Improvement District is contractually obligated to Byars Construction Company regarding these installations, and we note that amongst other improvements, the water lines are in process of being installed presently; that the Kingsbury General Improvement District has obtained an approximate $1,000,000.00 financial commitment from the Federal Government through the Environmental Protection Agency, and in order to obtain this funding included all of Units 1, 2 and 3 of the Tahoe Village subdivision; that said District has already received approximately $550,000.00 in the way of contractual progress payments, and there is approximately $500,000.00 still due and payable to the District on account of this matching grant; that Tahoe Village Units 1, 2 and 3 were included in the application for the EPA grant as stated above, but were additionally included to stay within the NRS 318 statutory assessment ceiling, in that the assessments cannot exceed 50% of the fair market value of the properties the subject of the bonded indebtedness;[1] that the present Kingsbury General Improvement District "deadline" as set by the Federal Government for completion of the sewer project is December of 1974; that construction of the sewer facilities herein referred to comprehending the subject subdivisions was made mandatory by the Federal Court decree issued by the Honorable Bruce Thompson, of the Federal District Court for the Northern District of Nevada, in 1973; that as a result of District Project No. 73-1, which was for the installation of the sewer interceptor line in Tahoe Village Units 1, 2 and 3, are subject to a substantial assessment; that should these subdivisions be prevented from proceeding with their construction of living units, it is probable that assessments will not be paid by the Defendants adversely affected thereby, and this condition, and other circumstances, would in all probability halt construction of the sewer and water distribution systems, including a 1.2 million gallon water storage tank in process of construction for the benefit of all of the Tahoe Village units, in addition to adversely affecting fire protection within the District might well result in the retention of the approximate $500,000.00 of the EPA grant which is presently being retained by the Federal Agency; that in addition, if the real property owners the subject of the above referred to assessments fail, refuse or neglect to pay their assessments, or any parts thereof, then Chapter NRS 318 requires the District's general fund to respond with payment of the bonded indebtedness, with the General Fund serving as a "sinking fund";[2] that should this latter condition arise, testimony establishes that the District would have to increase its advalorem tax which would have the technical effect of "exceeding the constitutional well-known $5.00 limitation".

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[1] NRS 318.370(2)

That there has been continuous building and/or progress with respect to improvements within the subject subdivisions since the year 1967; that the Plaintiff has been aware of such progress as early as the year 1966, but at least by the year 1969; that the outlet weir near Tahoe City, California referred to in Article V, sub-section D of the Compact, has not yet been built; that once built, even under the Compact, a 19,000 acre-feet annually allocated to the States of Nevada and California users would increase to 34,000 acre-feet annually; that the two states are "approaching" the 19,000 acre-feet annually, but are still short of that proposed statutory 19,000 acre-feet limitation; that the 19,000 acre-feet figure was arrived at by extensive study made by the California-Nevada Interstate Water Commission, and this was also true of the 34,000 acre-foot figure above referred to; that the Nevada downstream users include, but are naturally not limited to, the Truckee-Carson Irrigation

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[2] NRS 318.435(1) and
NRS 318.480

District, the City of Reno, Pyramid Lake, and other prior rights; that generally speaking, a minimum of 50% of the waters taken from Lake Tahoe will, through closed sewer facilities, return into the Basin; that there is no evidence showing that prior down-stream water rights owners would be affected by Lake Tahoe water use within or without the Basin incidental to State of Nevada Engineer's Permit No. 21319 to the Kingsbury Water Corporation, and Permit No. 23017, both documents being admitted into evidence as Plaintiff's Exhibit "C"; that this Court took under advisement the question as to the admissability of Plaintiff's Exhibit "A" and "D", and determines Exhibit "A" for identification only to be inadmissible as it constitutes material adopted by the California State Water Resources Control Board in March of 1972, and is held to have no bearing upon Nevada's use of Lake Tahoe waters and additionally, because of this Court's determination concerning the inapplicability of the Compact to the case at bar. In other words, the Court finds Exhibit "A" as proposed, to be immaterial to these proceedings at this time, and alternatively, to be hearsay in nature. Exhibit "D" for identification only is also rejected as an exhibit, and is hereby held inadmissible as the Court finds that the State of Nevada Engineer's Order of Modification to its Permit No. 23017, belonging to the Kingsbury Water Corporation, was done and accomplished without notice or hearing and violates due process, and it is held inadmissible on the additional ground that it is conditioned upon "final allocation of the State of Nevada under the California-Nevada Interstate Compact Commission", which said Compact is not a legal body as determined by this Court. This Court finds Exhibit "D" for identification to be of no legal effect, and further finds and determines that Defendants SILVERS, Individually, and the LAKE TAHOE LAND COMPANY, a Nevada corporation, do have standing to object to its admissibility as a third party beneficiary and as a party, and in this case Defendants, who substantially relied upon the existence of these water rights as set forth in Exhibit"C" in evidence for use within, as well as without, the Lake Tahoe Basin of Lake Tahoe waters. In spite of Exhibit "B" in evidence, this Court finds that the Plaintiff has for several years immediately last past, been aware of these projects and has either expressly consented to water allocations and use to those portions of the subdivisions outside of the Lake Tahoe Basin, or has by Plaintiff's failure to act, acquiesced in the applicable Defendants proceeding as they have with Summit Village, as well as Tahoe Village. Further, Exhibit "E" in evidence again refers to Water Permit No. 23017, "to appropriate water from Lake Tahoe and a portion of the place of use is outside of the Lake Tahoe Basin", and it is that part of the June 24, 1970 "Office Memorandum" of the Division of Water Resources that refers to "the permit is subject to the allocation of the compact" that causes this Court to give very little weight to said exhibit. Though said Exhibit "E" shows a possible weakness in Defendant SIEVERS and LAKE TAHOE LAND COMPANY of what this Court would refer to as being a "possible water allocation problem", it is surprising that the State of Nevada elected not to take affirmative legal action with regard to these Defendants and their projects until June 7th of 1974, after substantial changes of position financially, and otherwise, had occurred in the way of their real properties being subject to significant bond assessments, and after the sizable improvements by way of installation of utilities, but not limited thereto, in the respective subdivisions. In addition, it is uncontradicted that with respect to several of these proposed non-condominium subdivision units, the State Engineer, through an authorized representative, consented to the jurat being placed upon the subdivision maps in question, and that ERNEST GREGORY, the Chief of the Bureau of Environmental Health of the Nevada Division of Health, gave all of his consents to each and every subdivision unit involved in this litigation, and he testified that his Bureau had jurisdiction over water quality, which would include power to either grant or deny project approval in connection with inadequacy of water supply. (This Decision and the following Orders are in no way affected by the question as to whether it is the State Engineer or the Bureau of Environmental Health that make the determination as to water source or supply). Again, both the State Engineer as well as the Bureau of Environmental Health are Divisions within Nevada's Department of Conservation and Natural Resources, and each Department or Bureau in this matter is presumed to know what the other Bureau or Department is doing administratively with respect to projects this unique. Indeed, their responsibilities and authorities necessarily overlap. In addition, the State Engineer testified on cross-examination that the water rights vested in 1963 (the effective date is the date of filing the application) as set forth in Plaintiff's Exhibit "C" in evidence. In addition, the State Engineer testified that he would "not grant a permit in derogation of down-stream users rights", and that this Court finds that the rights as set forth and established in Plaintiff's Exhibit "C" are appropriately granted by the State Engineer. The State Engineer also acknowledged that Permit No. 21319 (before the attempted modification in Exhibit "D" for identification) included the entire development and subdivisions subject to these proceedings. He further testified that his decision to modify Permit No. 21319 did not affect projects that had already been issued building permits, whether there had been construction on those projects or not. This Court finds and concludes that this distinction, without more, is arbitrary and unreasonable, and that since there are existing dwellings which qualify for the use of the Lake Tahoe waters outside of the Lake Tahoe Basin in this immediate geographic area, that it would be a violation of equal protection of the laws and due process of law to preliminarily enjoin the Defendants in these proceedings incidental to the Amended Complaint presently on file. In other words, there is no legitimate difference between a prospective subdivider with building permits and nothing more, and a prospective subdivider who has all the qualifications for the issuance of building permits and who has simply just not applied for them.

There was no testimony concerning the involvement of Defendant EARNHART W. THRAN, Individually, or as Clerk of Douglas County, in this matter as it would be the Douglas County Recorder, if any official, who was actually responsible for the filing of final maps, or their equivalent, concerning this type transaction. The third cause of action is accordingly dismissed as to EARNHART W. THRAN, Douglas County Clerk, as well as himself individually.

The evidence, amongst other things, clearly shows that the use of water within the proposed subdivisions in question, outside of the dwelling units, is minimal. Further, the State Engineer knew of the developments in question at inception, or, relatively speaking, within a reasonable period of time of their inception. To preliminarily, or otherwise, prevent the issuance of building permits for dwellings within the subdivisions in question would be financially disastrous to the Kingsbury General Improvement District, its coupon and bond holders, persons who have purchased lots within the development (and there is a substantial number of those), FERDIE SIEVERS, Individually, and the LAKE TAHOE LAND COMPANY, INC,. a Nevada corporation. Because of the substantial delays in seeking a Temporary or Preliminary Injunction in this matter, and because of the substantial detrimental reliance by particularly Defendants SIEVERS, Individually, and the LAKE TAHOE LAND COMPANY, INC., a Nevada corporation, the Plaintiff is guilty of laches and is by its conduct, additionally estopped from complaining at this time in this matter. The "strong circumstances needed to warrant reliance" upon the doctrine of laches are here present and equity "cries out" in favor of Defendants. Langir v. Arden, 82 Nev. 28 (1966), Nevada Land and Mortgage Company, et al, v. Lamb, Nevada Supreme Court Advance Sheet No. 7382, 89 Nev. (1973). In addition, there was testimony by DAN JENKINS, Building Supervisor in Douglas County, that his Department had complied with all local and state and other requirements for subdivisions of this nature, and that the State Bureau of Environmental Health had allowed these unit projects to proceed without condition, and that there was "nothing additionally required, nor had he been advised that anything additional was required" as a condition to Defendants proceeding with their dubdivision projects. It would be inequitable to preliminarily enjoin Defendants from proceeding with their subdivision projects. Neither has any evidence been presented to demonstrate to this Court in these proceedings thus far that any other prior water rights would be affected or infringed upon by the Lake Tahoe water allocation required by Defendants, and in fact, see particularly Defendants' Exhibits in evidence 2, 3 and 4.

The California-Nevada Interstate Compact (NRS 538.600) is not yet law. NRS 538.930 states:

> "No compact or agreement shall be binding on the State of Nevada until it has been approved by the legislature of this state and the Congress of the United States."

This provision was enacted at the time of adoption of the compact by Nevada.

NRS 538.600 states:

> ". . . the provisions of the compact shall become the law of this state upon the compact being operative as provided in Article XXII of the compact."

The compact itself states in Article II H as follows:

> "H. The term 'effective date of the compact' shall be the date on which the legislation provided for in Article XXII (1) and (2) shall become law."

Article XXII of the compact states:

> "This compact shall become effective when, but only if,
>
> "(1) It shall have been ratified by acts of the Legislature of each of the States of California and Nevada;
>
> (2) It shall have been consented to by act of Congress of the United States; and
>
> (3) Congress provides in its consent legislation or by separate legislation that the following provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America. . ."

The Court determines that the Compact does not apply to this case at this time since it lacks the legislative consent of the Congress of the United States. The Plaintiff was additionally unable to provide legal authority to this Court demonstrating why Lake Tahoe waters in this matter cannot be diverted to this limited area outside the Lake Tahoe Basin. This Court is unable to suggest why "comity" or "good faith" allegedly owed to the State of California should be invoked in derogation of its due process and equal protection rights hereinabove alluded to in this Decision. In addition, this case is clearly distinguished from Kings Castle Limited Partnership, et al, v. Washoe County, et al, 88 Nev. 557-560, particularly since we are not aware that the U. S. Congress "would soon adopt" the Compact (88 Nev. 559). In this matter the testimony established that a Congressional Committee had been in possession of this Bill for at least a couple of years. The case of Hinderlider v. La Plata Company, 304 U.S. 92 (1937) is also distinguished since in that case Congress had given the required legislative consent to the interstate compact prior to the controversy arising.

The following similarities exist in comparing the case at bar to the Morales v. Westergard, Nevada Supreme Court No. 7704: the project is within the Kingsbury General Improvement District, the Kingsbury Water Corporation is authorized to supply water to Summit Village Units 1 and 2, and to Tahoe Village Units 1, 2 and 3, and has certified that it has adequate water supply for the entire set of subdivisions; presently there is being constructed a closed in sewer system for servicing the area within the Improvement District, the systems received the approval of the proper Federal and State agencies and will be completed the fall of this year; there is no suggestion of pollution, inadequate water or quality (and this Court finds there is no suggestion of inadequate water quantity); all water used by the existing subdivisions and proposed dwellings therein comes from the Lake Tahoe Basin, and will be returned to the Lake Tahoe Basin by natural gravity through the closed sewer system, with the exception of minimal amounts used for outside maintenance (there is approximately 12% to be pumped back into the Basin); a number of units have been constructed at great expense to Defendant SIEVERS and the LAKE TAHOE LAND COMPANY, INC.; the above facts are not in dispute. In addition, substantial assessments have been paid on all of the real properties in Summit Village, as well as Tahoe Village, and there are other facts in the body of this lengthy Decision supporting the assertion of substantial change of position by said Defendants to their prejudice, as for example, their strong reliance upon the water supply (Plaintiff's Exhibit "C" in evidence), heavy improvements in all areas of Summit Village and Tahoe Village, etc.

As in the Morales case (supra), the Plaintiff asserts that if they were to grant approval of the maps in accordance with NRS 117.027(3), they would somehow violate the California-Nevada Interstate Compact, NRS 538.600, insofar as it pertains to the Lake Tahoe Basin. This Court has already concluded that that Compact is not the law. Notwithstanding, this Court does find and conclude that the subject projects would not interfere with the "orderly, integrated and comprehensive development, use, conservation and control of water within the Lake Tahoe Basin" (Article I of said proposed Compact) for the reasons herein stated, but not limited thereto. This Court additionally notes that the Morales case is distinguished from the case at bar in that the subdivisions in question do not have a condominium use The Court points out again that the subject record is uncontradicted in that the "Tramway Condominium Apartments" involved in the Morales case were outside the Lake Tahoe Basin, and are within the subject Summit Village subdivision, and to preliminarily enjoin the Defendants would violate the equal protection clauses and due process clauses of the United States Constitution and the corresponding sections of the Nevada State Constitution.

In addition, this Court concludes by stating that all of the maps presented for recordation comprehending the developments in question contained all the certificates required by NRS Chapter 116 and by NRS Chapter 278, and they were entitled to be recorded.

ORDERS AND JUDGMENTS

Based on the foregoing FACTS, CONCLUSIONS OF LAW AND DECISION this Court enters the following ORDERS AND JUDGMENTS:

1. That the Temporary Restraining Order initially issued by this Court and renewed, be and the same hereby is dissolved.

2. That the Motion and Application for Preliminary Injunction incidental to NRCP 65, be and the same is hereby denied.

3. That based upon the stipulation of all counsel of record the subject case is dismissed as to Individual

Defendants ROY GODECKE, CHARLES MENELEY and HAROLD P. DAYTON.

4. That EARNHART W. THRAN, Individually, and as the County Clerk of Douglas County, was improperly joined as a Defendant in these proceedings, and the case is dismissed as to said Defendant in his individual, as well as governmental, capacity.

5. That though the Plaintiff has failed to demonstrate to this Court at this time that there would be irreparable damage, or for that matter any damage, brought to the people of the State of Nevada, or to the people of Northern Nevada, the result of the prospective issuance of building permits in this matter, this ORDER AND JUDGMENT of denial of Preliminary Injunction is without prejudice as to Plaintiff's proceeding further in this Court on the merits in the best judgment of Plaintiff and Plaintiff's special counsel.

6. That though the evidence shows that the already built, and proposed to be built, family units are not condominiums, if appropriate, pursuant to NRS 117.027(3), in view of the failure of Plaintiff to establish that there is an inadequate water supply, and it appearing to the Court that there is in fact a sufficient water supply with Lake Tahoe being the source, that the appropriate certificate or other document should be issued by the Plaintiff STATE OF NEVADA, ex rel. R. D. WESTERGARD, showing favorable review regarding water quantity.

7. That this Court being conscious of the Motion to Dismiss, verbally made by defense counsel at the conclusion of the subject hearing on Preliminary Injunction, requires that said Motion to Dismiss, or equivalent Motion, be filed in writing in this Court, the same to be supported by Affidavits with

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reasonable opportunity of Plaintiff to respond thereto with countervailing Affidavits, but not limited thereto.

DATED this 10th day of July, 1974.

DISTRICT JUDGE

NO. 6479

NO. ______

'74 JUL 11 PM 3:18

EARNHART [illegible] TERAN
CLERK
BY Barbara Idiart
DEPUTY

STATE OF NEVADA)
) ss
COUNTY OF DOUGLAS)

BARBARA IDIART, being sworn, says that s he is a citizen of the United States, over 18 years of age, a resident of Douglas County, and not a party to the within action.

This affiant's residence address is 231 Circle Dr., Gardnerville, Nevada 89410

That affiant personally served a copy of the attached DECISION AND ORDERS ON MOTION FOR PRELIMINARY INJUNCTIONS on HOWARD D. McKIBBEN, DISTRICT ATTORNEY, at his office ~~(residence)~~ address DOUGLAS COUNTY COURT HOUSE, MINDEN, NEVADA

Barbara Idiart

Subscribed and sworn to before me on JULY 11, 1974

EARNHART [illegible] TERAN
County Clerk in and for said County and State.

By Vickie [illegible], Deputy

I, HOWARD D. McKIBBEN, hereby acknowledge that I received the above mentioned copy on this 11th day of JULY, 1974.

Howard D. McKibben
by Lois Storke

NO. 6479 FILED
NO. ______

'74 JUL 11 PM 2:38
EARNHART W. THRALL
CLERK
BY Barbara Idiart
DEPUTY

STATE OF NEVADA)
) ss
COUNTY OF DOUGLAS)

Barbara Idiart, being sworn, says that s he is a citizen of the United States, over 18 years of age, a resident of Douglas County, and not a party to the within action.

This affiant's residence address is 231 Circle Dr., Gardnerville, Nevada 89410

That affiant personally served a copy of the attached DECISION AND ORDERS ON MOTION FOR PRELIMINARY INJUNCTIONS on WILLIAM J. NEWMAN, FOR ROLAND D. WESTERGARD at ~~his office (residence) address~~ The Douglas County Court House, Minden, Nevada 89423

Barbara Idiart

Subscribed and sworn to before me on July 11, 1974

EARNHART W. THRALL
County Clerk in and for said County and State.

By Vickie Mibeles, Deputy

I, WILLIAM J. NEWMAN, hereby acknowledge that I received the above mentioned copy on this 11th day of July ______, 1974.

William J. Newman
for Roland D. Westergard
Division of Water Resources

AFFIDAVIT OF SERVICE BY MAIL

(Must be attached to original or a true copy of paper served)

STATE OF NEVADA
COUNTY OF DOUGLAS } ss.

No. 6479

BARBARA IDIART, being sworn, says that She is a citizen of the United States, over 18 years of age, a resident of DOUGLAS County, and not a party to the within action.

This affiant's residence (business) address is DOUGLAS COUNTY COURT HOUSE, MINDEN, NEVADA 89423

That affiant served a copy of the attached DECISION AND ORDERS ON MOTION FOR PRELIMINARY INJUNCTIONS

by placing said copy in an envelope addressed to Ross de Lipkau, Deputy Attorney General and Roland D. Westergard, Nevada State Engineer,

at his office (residence) address Department of Water Resources, 201 South Fall Street, Carson City, Nevada 89701

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on July 11 19 74, deposited in the United States mail at Minden, Nevada

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me on July 11, 1974

EARNHART W. THRAN, COUNTY CLERK
Notary Public in and for said County and State
By Vicki Michelli
Deputy

Barbara Idiart

FILED
NO. ______

'74 JUL 11 PM 3:18

EARNHART W. THRAN
CLERK
BY Barbara Idiart
DEPUTY

AFFIDAVIT OF SERVICE BY MAIL

(Must be attached to original or a true copy of paper served)

STATE OF NEVADA
COUNTY OF DOUGLAS } ss.

No. 6470

BARBARA IDIART, being sworn, says that She is a citizen of the United States, over 18 years of age, a resident of DOUGLAS County, and not a party to the within action.

This affiant's ~~residence~~ (business) address is DOUGLAS COUNTY COURT HOUSE, MINDEN, NEVADA 89423

That affiant served a copy of the attached DECISION AND ORDERS ON MOTION FOR PRELIMINARY INJUNCTIONS

by placing said copy in an envelope addressed to ROBERT W. MARSHALL, ESQ.

at his office ~~(residence)~~ address VARGAS, BARTLETT & DIXON, ATTORNEYS AT LAW, 201 WEST LIBERTY STREET, RENO, NEVADA 89501

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on July 11 19 74, deposited in the United States mail at Minden, Nevada

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me on July 11, 1974

EARNHART W. THRAN, COUNTY CLERK
~~Notary Public~~ in and for said County and State
By Vicki Mchilei
Deputy

Barbara Idiart

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EARNHART W. THRAN
CLERK
BY Barbara Idiart
DEPUTY

EXHIBIT "C"

DESCRIPTION OF PENDING LITIGATION

In the early 1970's the United States sought leave to file a complaint in the United States Supreme Court pursuant to the Court's original jurisdiction. The proposed complaint which was against the State of California and Nevada, sought a declaration of the respective rights of the states and of the United States in the Truckee River. The purpose of the United States in seeking to institute that litigation was to perfect a prior water right against all upstream uses that would maintain Pyramid Lake at its then current level and to prevent deterioration of the Lake and the Truckee River as the habitat for the native fish that had historically thrived in the lake. See, United States v. Nevada, 412 U.S. 534, 1973. On June 11, 1973, the Supreme Court denied leave to file that complaint.

Thereafter, on December 21, 1973, the United States commenced an action in the United States District Court for the District of Nevada entitled United States of America v. Truckee-Carson Irr. Dist. et al., Civil No. R2987-RCB. That action named approximately 17,000 individuals, the State of Nevada, the Truckee-Carson Irrigation District, the Cities of Reno and Sparks, Nevada, Washoe County Nevada, and Sierra Pacific Power Company as defendants. In that action, the United States claimed an implied, reserved water right with a December 8, 1959 priority date to maintain and preserve Pyramid Lake and the Truckee River as a fishery.

A bifurcated trial on a single affirmative defense began on November 17, 1975 and continued intermittently until May 20, 1976.. The trial court issued its decision on December 12, 1977 and an appeal was taken to the Ninth Circuit. The opinion of that court was issued on June 15, 1981, and was amended thereafter on July 10, 1981 and January 5, 1982. See United States v. Truckee-Carson Irr. Dist. 649 F.2d 1286 (9th Cir. 1981) amended 666 F.2d 351 (9th Cir. 1982).

The State of Nevada and the Truckee-Carson Irrigation District petitioned for certiorari and the Pyramid Lake Paiute Tribe cross-petitioned for certiorari. Certiorari was granted by the Supreme Court on October 12, 1982 and the case was argued and submitted on April 27, 1983. On June 24, 1983, the Supreme Court of the United States entered its decision which is *Nevada v. United States*, 463 U.S. 110 (1983).

The case was remanded to the District Court for further proceedings in conformity with the Supreme Court's opinion. Before that court acted on the remand order, however, the Tribe moved to amend its original complaint. On September 20, 1985, the District Court denied the Tribe's motion to amend and dismissed the Tribe's complaint in its entirety. The case will now proceed on the United States' claim for waters for the Stillwater Wildlife Refuge, the Toiyabe National Forest and other waterholes in Nevada.

There have been a number of other related actions which include *Pyramid Lake Tribe v. Morton*, 354 F.Supp. 252 (D.D.C. 1973). There the Tribe challenged the operating criteria for the Newlands Project developed by the Secretary of the Interior. In *Truckee-Carson Irrigation District v. Secretary*, Civ. No. R-74-34-BRT (D.Nev. 1983), *aff'd* 742 F.2d 527 (9th Cir. 1984), *Cert. Den.* 53 U.S.L.W. 3867 (June 11, 1985), the courts upheld the Secretary of the Interior's decision to terminate the 1926 contract permitting the Truckee-Carson Irrigation District to operate the Newlands Project. Another case is *Carson-Truckee Water Conservancy District v. Watt*, 537 F.Supp. 106, 549 F.Supp. 704 (D.Nev. 1982), *aff'd* 741 F.2d 257 (9th Cir. 1984), *cert. den.* 53 U.S.L.W. 368 (March 26, 1985) where the courts upheld the Secretary's decision to utilize water from Stampede Reservoir located on the Little Truckee River in California to increase the spawning flows for the Pyramid Lake fishery.

The Pyramid Lake Paiute Tribe has also filed an action in the United States District Court for the Eastern District of California entitled *Pyramid Lake Paiute Tribe of Indians, Plaintiff v. State of California et al., Defendants,* Civil No. S-81-378-RAR. There the Tribe seeks to determine the nature and extent of its reserved water rights relative to the rights of present and future water users in the State of California. There have been a number of other actions and proceedings involving these matters including actions in the Court of Claims and proceedings before the Federal Energy Regulatory Commission.

Sierra Pacific Power Company
a Sierra Pacific Resources company

Joe L. Gremban
Chairman and C.E.O.

July 30, 1986

Honorable Orrin G. Hatch
Chairman
Subcommittee on the Constitution
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Hatch:

In response to the questions raised by yourself and Senator DeConcini in your letter of July 16, 1986, I am providing the following:

QUESTION 1: Would you support or agree to amendments of Article VI(B)(4)(a) which would delete the word "agricultural" and substitute the words "fish, wildlife and recreational" and would add the words "or federal" after "Nevada"? If not, why not?

QUESTION 2: Would you support or agree to amendments to Article VI(B)(4)(a) which would delete the words "domestic, municipal, industrial" and substitute the words "fish, wildlife, recreational" and would add the words "or federal" after "Nevada"?

ANSWER: Sierra Pacific does not support any amendment to the Compact which would require the Compact to go back to the two state legislatures for approval. We believe that the amendments suggested in the above questions would require re-ratification by the two states. Additionally, Sierra Pacific believes that such amendments are unnecessary, and simple report language could be developed to interpret the Compact.

Article VI(B)(4)(a) refers to the development of reservoir storage to supply what we refer to as the Second 10,000 acre foot allocation to California. Pursuant to the National Environmental Policy Act of 1969 (NEPA), the California Environmental Quality Act (CEQA) and the Endangered Species Act, no reservoir site could be developed without considering impacts on fish, wildlife and recreation. Further, construction and diversion of flows would be subject to a Section 7 consultation with the U.S. Fish and Wildlife Service under the terms of the Endangered Species Act to determine whether the endangered species would be impacted by the Reservoir. In addition, the decision in Carson Truckee Water Conservancy District v. Secretary of the Interior (a copy is attached) will apply to construction of any reservoir and require that the needs of the endangered species are met first.

QUESTION: III. Article XIII makes a point of recognizing water use for wildlife, fish and recreation as a public interest and beneficial use. But in the operational portions of the Compact, environmental uses are not protected.

For example, Article VI, Section B(4) authorized additional water use for California under certain conditions; but it specifies that all "existing beneficial uses of water for domestic, industrial and agricultural purposes in Nevada" will be protected and not subject to this additional yield to California.

If environmental uses are generally recognized as a public interest and beneficial use, why are only these other uses of water in Nevada protected? Why didn't the drafters include existing environmental use of water in Nevada in Section B(4)?

ANSWER: The Interstate Compact, California law, and Nevada law recognize wildlife, fish and recreation as beneficial uses of water. The Compact did not attempt to set out particular water rights or uses to be allowed within a particular state but only to agree to when each state would be entitled to its allocation. When permitting a reservoir in California, California law would require compliance with the EQA. Federal law would require compliance with NEPA and the Endangered Species Act, whether or not the Compact is in effect. Absent a provision such as Article VI(B)(4) California would not be required to consider municipal or agricultural use in Nevada first.

QUESTION IV: In view of your long experience with the outstanding water rights disputes involved here, would you say ratification of the Compact, as it now stands, would help or hinder settlement of those disputes?

ANSWER: We firmly believe that ratification of the Compact with certain "saving" language which does not require the Compact to be returned to the two state legislatures would help the settlement of all disputes for the following reasons:

1. There is much myth and conjecture held by the Pyramid Lake Tribe relative to the Compact. Representatives of the Tribe politically and emotionally cannot agree to the terms of the Compact.

2. Sierra Pacific, as well as other interests, cannot agree to the settlement of all disputes unless we are assured of the California Nevada allocation.

3. The amounts of water going to California are very small, and translate to even smaller amounts in Pyramid Lake due to the concept of return flows. Because the Tribe's claim is to all unappropriated water, the water would go first to make up shortages in all other water rights before that water would accrue to Pyramid Lake. The Tribe merely wants to hold up ratification of the Compact as a bargaining chip in California. Our experience in dealing with local California interests is that there is growing pressure to do away with the Compact and to sue or negotiate for more water allocations from the Nevada share. If, during the negotiations, the parties were required to address additional claims by California, it is an absolute certainty that there would not be enough water in the system to get the resolution we need.

Sincerely,

Joe Gremban

JOE GREMBAN

Senator LAXALT. We thank you, Mr. Gremban, for an excellent statement.

Senator Simon, if you want to be brief, this is about as good a history of this horrendous problem as I have seen in a long while.

Senator SIMON. I do not begin to understand it. I have just been glancing through your statement, and also the statement by Mr. Joseph Ely and Robert Pelcyger. I may be mispronouncing those names.

Just one question. You say both States have adhered to the compact informally.

Mr. GREMBAN. Yes.

Senator SIMON. Now, when I read the statement by the representative of the Indian tribe, he says,

> We are here because the compact discriminates against us. It protects everyone else's existing rights and beneficial uses, except ours. The compact takes away the water that we are currently using and makes it available for future new uses in both States.

Now, you also said you are working with the Indian tribe. Can you put all this together in context for me? Are we taking something away from the Indian tribe if we approve this?

I guess the second question is, If this compact is working informally, why do we need Federal ratification?

Mr. GREMBAN. We need Federal ratification because the compact clearly sets out the allocation of waters between the two States. It does not in any way try and determine what the uses of water are within each State. It is a matter of how much water does each State get.

As far as the Indian rights are concerned, we feel that they are protected in the language of the compact. However, we recognize that the Indian tribe had some concern about their rights not being adequately protected, and consequently I have held discussions with the tribal chairman and Bob Pelcyger to try and address that concern that they have expressed and see if there were some means of including a clarification in the committee reports.

We have discussed language that would do that. Now, the language itself has not been agreed to by the Indian tribe, nor has it been agreed to by the other Nevada participants. But I honestly believe that this clarifying language would satisfy the concern of the tribe and would enable us to proceed with the adoption of the compact.

Senator SIMON. Would it be possible to simply work out an agreement with the tribe?

Mr. GREMBAN. I think that if all parties concerned were to get together today or tomorrow, we could arrive at language that would be acceptable to everyone. I would hesitate to say that this should drag on for some period of time.

I think it has to be handled expeditiously and brought to Congress for approval.

Senator SIMON. I thank you, Mr. Chairman. If an agreement could be worked out, obviously that course would be the best of all worlds. Thank you.

Senator LAXALT. I thank the Senator.

Our next witness will be Mr. Pine. Ed, we are really running tight on time, and we have your full statement that is before the subcommittee. I wonder if you would be kind enough to summarize the position of the Conservancy District for us.

STATEMENT OF EDWARD L. PINE

Mr. PINE. Yes, sir. Mr. Chairman and members of the Committee, our comments will be very brief. I am Edward L. Pine, a registered professional engineer, a member of the Nevada Interstate Compact Commission, a member of the Board of Directors of the Carson-Truckee Water Conservancy District, and I am presently serving as the president of the National Council of Engineering Examiners.

I should like to introduce James W. Johnson, Jr., who has been the Nevada counsel for the California-Nevada Interstate Compact Commission from its inception to the present date. He is also counsel for the Carson-Truckee Water Conservancy District.

Senator LAXALT. Mr. Johnson needs no introduction to the chairman. He has worked with him on various matters, water and otherwise, for many, many years. We are glad to have him here.

Mr. PINE. I urge favorable consideration of S. 2457. The negotiations were intense and certainly not without controversy. However, when the final draft was adopted by the legislatures of California and Nevada, it was considered to be a fair and complete allocation of the waters of the Walker River, Carson River, Truckee River, and Lake Tahoe.

The interests of the Pyramid Lake Paiute Tribe were represented during compact negotiations. As a matter, the reason for resubmission of the compact to the State legislatures was as a result of the requested amendments by the Pyramid Lake Paiute Tribe.

All of the amendments to the compact that were recommended by the Pyramid Lake Paiute Tribe were incorporated in the finalized version and adopted by the legislatures of both California and Nevada.

Lake Tahoe possesses a natural rim which restricts the outflow of the lake, dependent upon the particular lake level at any given time. In other words, as the elevation of the lake decreases, the ability to utilize water from the lake decreases and the outflow is restricted and much of the water of Lake Tahoe is then lost to evaporation and is of no value to anyone.

While much has been made of the allocations to California, we must urge that the compact allocate the waters of Lake Tahoe and the Truckee River fairly, and such allocations are extremely appropriate.

Including the allocation for use in the Lake Tahoe Basin, California is allocated less than 10 percent of the waters of the Truckee River system. Under these circumstances, and to protect the delicate environmental balance necessary to protect the Lake Tahoe area, it is absolutely necessary that California's right to use of such waters be protected.

In this light, certain provisions of the compact are sought to bind the United States, its agencies, wards, and instrumentalities.

We have been asked to comment upon the reservation to California of 6,000 acre-feet of conservation yield from the Stampede Reservoir which is contained in article VI(B)(3). We understand that the Pyramid Lake Paiute Tribe objects to such a reservation in the State of California.

We have heretofore indicated that due to California's minimal allocations of water from the Truckee River system that any water granted to them should remain inviolate; 6,000 acre-feet is considered minimal when compared with loss of water from the Truckee River system by evaporation. During a normal year Pyramid Lake's loss by evaporation is in excess of 400,000 acre-feet and the loss at Lake Tahoe by evaporation is in excess of 300,000 acre-feet. The 6,000 acre-feet, with respect to evaporation only, is less then 1 percent and when considered with all other useage the 6,000 acre-feet becomes very minimal. Annual loss figures were obtained from the U.S. Geological Survey, Carson City, and on page 3 of the Pyramid Lake task force report issued December 1971.

There has been an indication that the Pyramid Lake Paiute Tribe is of the opinion that article XII is unclear and confusing. Article XII establishes a method of implementation of a plan, and also a procedure is established as to the resolvement of of any revision of the current operating plan.

Concern has been stated relating to the Floriston rates, and that the Floriston rates are obsolete. There is nothing in the compact which precludes changes in the Floriston rates if they are, in fact, obsolete.

This has not been demonstrated and, as a matter of fact, the Floriston rates have been of great value in protecting the health and welfare of residents in the Truckee Basin. Also, the rates are important for sanitation and fish life.

Mr. Chairman, the balance of my comments are in the written statement. I appreciate very much this opportunity to appear before you and we are certainly in favor of the Senate bill that you and Senator Hecht introduced.

[The prepared statement follows:]

PREPARED STATEMENT OF EDWARD L. PINE

Mr. Chairman and Members of the Subcommittee:

Our comments, while brief, wish to include the fact that we concur with all of the other proponents who will make statements herein. We will address a portion of what we understand are objections raised by the opponents to ratification of the compact.

I am Edward L. Pine, a registered professional engineer; a member of the Nevada Interstate Compact Commission, a member of the Board of Directors of the Carson-Truckee Water Conservancy District, and I am presently serving as the President of the National Council of Engineering Examiners.

I should like to introduce James W. Johnson, Jr., who has been the Nevada counsel for the California-Nevada Interstate Compact Commission from its inception to the present date. He is also counsel for the Carson-Truckee Water Conservancy District and has worked extensively in water matters involving Nevada water supplies since 1950.

I urge favorable consideration of Senate Bill 2457. The bill sets forth the division of interstate water between California and Nevada. The bill does not establish any division of water rights among the Nevada users.

The California-Nevada Interstate Compact was finalized and approved by the respective state legislatures of California and Nevada, after 13 years of negotiations in which all interested parties on both sides of the state line had the opportunity to be heard.

The negotiations were intense and certainly not without controversy. However, when the final draft was adopted by the legislatures of California and Nevada, it was considered to be a fair and complete allocation of the waters of the Walker River, Carson River, Truckee River and Lake Tahoe.

The compact effectively allocates the waters of these three interstate stream systems and the one interstate lake between the two States of California and Nevada.

In the approval of S.B. 2457 tnis committee will be acting in accord with the legislatures of two states, California and Nevada. Your attention is invited to Article III, page 3, lines 23 to 25, and page 4, lines 1 through 14, which sets forth the procedures in the division of waters between California and Nevada.

The Truckee River agencies involved in the compact have operated within the confines established in the compact and no hardship has been experienced by the Pyramid Lake Paiute Tribe as a result. In fact, conditions have improved at Pyramid.

The interests of the Pyramid Lake Paiute Tribe were represented during compact negotiations. As a matter of fact, the reason for resubmission of the compact was as a result of requested amendments by the Pyramid Lake Paiute Tribe. All of the amendments to the compact that were recommended by the Pyramid Lake Paiute Tribe were incorporated in the finalized version and adopted by the legislatures of both of the States of California and Nevada.

At the outset of the negotiation, California interests expressed concern in maintaining the delicate environmental balance for the preservation of Lake Tahoe.

Lake Tahoe is utilized by the United States to store water which is released for uses downstream in Nevada.

Lake Tahoe, as you perhaps know, is an alpine lake over 6,000 feet above sea level, of great depth, and extremely clear. Its outlet is situated on the northwest corner of the lake, and is tributary to the Truckee River. It possesses a natural rim which restricts the outflow from the lake, dependent upon the particular lake level at any given time. In other words, as the elevation of the lake decreases, the ability to utilize water from the lake decreases and the outflow is restricted and much of the water of Lake Tahoe is then lost to evaporation and is of no value to anyone. This fact was instrumental in the prerequisite to the allocation to the Lake Tahoe basin and was predicated upon the installation of an overflow weir.

Extreme low lake levels require a long recovery period and cause high level damage to the shoreline. Extreme high water levels also create economic hardship, particularly to the shoreline.

For these reasons, stringent provisions on pumping from Lake Tahoe were inserted into the compact to preserve as far as possible the pristine quality of waters of Lake Tahoe. Any pumping from Lake Tahoe requires, under present law, the consent of the State of California. The provisions of the compact allow for pumping from Lake Tahoe. The permanent compact commission established under the terms of the compact may allow pumping from Lake Tahoe only in drought emergency, and to the extent required for domestic, municipal, and sanitary purposes, and when other water is unavailable from other sources.

While much is being made of the allocations to California, we must urge that the compact allocate the waters of Lake Tahoe and the Truckee River fairly and such allocations are extremely appropriate.

Including the allocation for use in the Lake Tahoe Basin, California is allocated less than 10% of the waters of the Truckee River systems.

Under these circumstances, and to protect the delicate environmental balance necessary to protect the Lake Tahoe area, it is absolutely necessary that California's rights to the use of such waters be protected. In this light, certain provisions of the compact are sought to bind the United States, its agencies, wards, and instrumentalities.

To achieve this end, it will be necessary to amend S.B. 2457 relating to the binding provisions by striking the existing Section 2 of Title 23, and inserting in lieu thereof the following language:

"Sec. 2. The following provisions of the Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:

Article V, Section D
Article V, Section F
Article VI, Subsection B.1
Article VI, Subsection B.3
Article vI, Subsection B.4
Article VI, Section D
Article VII, Section A
Article VII, Section B
Article VII, Section C
Article VII, Section D
Article VII, Section E
Article VIII, Subsection A.4(b)
Article VIII, Subsection B.1
Article VIII, Subsection B.5"

We have been asked to comment upon the reservation to California of 6,000 acre feet of conservation yield from Stampede Reservoir which is contained in Article VI, B.3. We understand that the Pyramid Lake Paiute Tribe objects to such a reservation in the State of California. We have heretofore indicated that, due to California's minimal allocations of waters from the Truckee River system, that any water granted to them should remain inviolate.

With regard to this particular paragraph in the California-Nevada Interstate Compact, it should be pointed out that the United States had made application to the State of California for storage of 156,000 acre feet at the Stampede Reservoir site. In granting that permit to the United States, the State of California reserved for uses in California the 6,000 acre feet referred to in Article VI, B.3. The application and reservation in the permit preceded the drafting of the language in the compact and it is our contention that, without the compact, the 6,000 acre feet is at present a viable reservation for use in the State of California.

There has been an indication that the Pyramid Lake Paiute Tribe is of the opinion that Article XII, Coordination of Reservoirs, is unclear and confusing. Article XII establishes a method of implementation of a plan and also a procedure is established as to the resolvement of any revision of the current operating plan. It is to be noted that the major reservoirs such as Tahoe and Stampede are under the control of the Federal Governmant. The government or any other reservoir owner shall have the right to refuse to participate in a plan. Further, the owner of a reservoir may develop plans for coordination thereof and the commission will receive a written notice from the reservoir owner at least 60 days prior to implementation.

Concern has been stated relating to the Floriston rates and that the Floriston rates are obsolete. There is nothing in the compact which precludes changes in the Floriston rates, if they are in fact obsolete. This has not been demonstrated and, as a matter of fact, the Floriston rates have been of great value in protecting the health and welfare of residents in the Truckee Basin, also the rates are important for sanitation and fish life. It appears to us to be elementary that coordination of reservoir operations would enhance the uses of the waters involved and stabilize stream flows to the benefit of all water users, including the Pyramid Lake Paiute Tribe.

CARSON-TRUCKEE
WATER CONSERVANCY DISTRICT
P.O. Box 2047 • Tel. 322-8041 • Reno, Nevada 89502-2047

July 31, 1986

The Honorable Orrin G. Hatch
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Hatch:

In response to your letter of July 16, 1986 concerning two amendments to Article VI(B)(4)(a) of Senate Bill 2457, the Carson-Truckee Water Conservancy District cannot agree to the amendments.

The reason for not agreeing is the fact that the Compact would have to be returned to the State Legislatures of Nevada and California for their approval. The original Compact required several years and two ratifications by the State Legislatures. The amendments strike down the very items which required considerable negotiation by the Members of the Compact Commission. It is doubtful that accord could be reached in the revision of Article VI(B)(4)(a).

Very truly yours,

Edward L. Pine

Edward L. Pine,
Secretary-Treasurer

ELP:cs

Senator LAXALT. Thank you very much, Mr. Pine. You did an excellent job summarizing.

Who wishes to be heard next? The Farm Bureau.

STATEMENT OF DAVE FULSTONE II

Mr. FULSTONE. Thank you, Mr. Chairman. I am Dave Fulstone, president of the Nevada Farm Bureau, the largest farm and ranch organization within the State. I am a fifth-generation Nevada rancher. I have been involved on the Walker River all of my life, and so has my family.

I will not plow the same ground twice and I will just summarize, and then would like to, with your permission, have Lyman McConnell from TCID give a statement.

Senator LAXALT. Surely.

Mr. FULSTONE. The Farm Bureau believes that the compact before you is the best possible settlement of the bi-State water allocation question, based as it is on the historical uses and having been well tested over the past 15 years.

Both States have abided by its terms, even though the document is not official until made final by Congress. Four of the five rivers within the State of Nevada are covered by this bi-State compact, and it is the very heart of agriculture in our State.

This compact is very important to our rural communities' agriculture, and we believe that the compact has been hashed and rehashed over many, many years and is really a fine document in the way it has been written and introduced by you, Senator.

In conclusion, I think that now is the time to take the important step forward and remove the cloud of uncertainty over the future of western Nevada and its waters, and we at the Nevada Farm Bureau sincerely support 2457.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF DAVID H. FULSTONE II

Good morning Mr. Chairman and committee members. My name is Dave Fulstone. I'm President of the Nevada Farm Bureau, Nevada's largest farm and ranch organization with membership including most of agriculture in our state.

I would like to speak strongly in support of S. 2457, a bill badly needed in our state that is the next step, and a big one, toward solving the water allocations that have plagued Nevada for more than the century of its existence.

As you know, water is the most precious resource of all in the West, as it is becoming in the rest of the country. You might be aware, as well, that Nevada is the most arid state of the 50, where the value of water can be compared with that of gold.

Thus, it is no mystery why water disputes have occupied a great deal of the time of policy makers and have cost agriculture and other users untold millions of dollars in legal expenses over the years.

These disputes continue, and one of the river systems included in the compact, the Truckee River, is considered to be the most litigated waterway in the nation.

With the economics of agriculture increasingly tenuous, I feel that the time has come once and for all to put our "water wars" behind us. It is Farm Bureau's goal to have a comprehensive water management plan for the entire state enacted by our legislature soon for the wise marshalling and conservation of our water.

First, however, we need to know exactly how much water we have to plan for, and of course, the compact spells this out on four of the state's five in-flowing river systems.

The compact also would set the tone, I believe, for final resolution of the legal disputes among the various users on these river systems, particularly the Truckee. This would be beneficial for all in the orderly planning of the water use along these stream systems. I might add that this is particularly critical, given the fact that Nevada is among the top five growth states in the nation and that the region covered by the compact is among the fastest-growing regions in the state.

Many of the water disputes in the area have been solved over the years, and it would appear that final resolution is now possible--and not too far in the future. With congressional ratification of this compact, work can concentrate on resolving the few remaining local issues. Final resolution will spare farmers of the Lahotan Valley in particular the heavy burden of legal expenses that are driving some farmers to the edge of ruin.

Farm Bureau believes that the compact before you is the best possible settlement of the bi-state water allocation question, based as it is on historical uses and having been well tested over the past 15 years. Both states have abided by its terms, even though the document is not official until made final by Congress.

In conclusion now is the time to take that important step forward and remove the cloud of uncertainty over the future of western Nevada and its water.

Senator LAXALT. Thank you.

STATEMENT OF LYMAN F. McCONNELL

Mr. McCONNELL. Mr. Chairman, I appreciate the opportunity to speak today, and I appreciate Mr. Fulstone giving me a portion of his time and I appreciate the committee allowing me the opportunity.

My name is Lyman McConnell. I am the project manager of the Truckee-Carson Irrigation District. As you know, we have been involved in litigation and settlement negotiations with the tribe for many, many years.

The board of directors, elected by the ranchers and farmers in the agricultural area and community of Churchill County, have unanimously voted to support this legislation in order to get some certainty and finality to the allocation of the waters between the States.

As you know, we spent several years attempting to negotiate a settlement which was introduced in the last year, and that failed as a result of the tribe rejected it on an emotional basis, I believe.

I feel that even though the compact was negotiated prior to a lot of the decrees being finally entered, those decrees have set forth the rights upon the Carson and the Truckee Rivers.

I believe in the record it could be indicated that if there is some concern with the allocations of water on the Carson River that it was not the intent of the legislation to interfere with any existing decrees.

I believe, in the introduction of this bill, it was indicated that the existing rights and beneficial uses are recognized as having the highest priority of use of available waters, and that the waters that are not needed to satisfy those recognized existing rights and beneficial uses are to be diverted in proportion to water needs of the two States.

Uses of water made under Federal claims of right in each State are to be considered as benefiting the State in which the use is made, and hence are to be charged against the allocation of that State.

I believe that if we do get this legislation passed, it will bring a little more certainty to the water situation in California and Nevada, and I think that all concerns can be addressed and taken care of.

I appreciate the opportunity. I do have a prepared statement I would like to submit, as well as a statement of George Lott, the president of the Greenhead Hunting Club in the Fallon area, and I would like to submit both those statements for the record.

Senator LAXALT. The statements will be filed.

Mr. McCONNELL. Thank you.

[The prepared statements follow:]

PREPARED STATEMENT OF LYMAN F. McCONNELL

Mr. Chairman and members of the committee, my name is Lyman F. McConnell. I am the manager of the Truckee-Carson Irrigation District. The District operates the Newlands Project and has since 1927.

Early in this century, the United States built the Newlands Reclamation Project pursuant to the Reclamation Act of 1902. The Newlands Project began in 1903 -- the first construction project authorized by the U. S. Reclamation Service -- with the construction of Derby Dam on the Truckee River. At Derby Dam, water is diverted from the Truckee River into the Truckee Canal for irrigation of lands in the Fernley and Swingle Bench area as well as diversion to Lahontan Reservoir for storage. The canal serves approximately 1,500 water users and extends 31 miles to Lahontan Reservoir. The main dam and storage facility for the Newlands Project is Lahontan Dam located on the Carson River approximately 15 miles west of Fallon, Nevada. The project provides water to approximately 2,500 water users who own 73,002 acres of water right lands.

Included within the Lahontan Valley and serviced by the Truckee-Carson Irrigation District is the Fallon Paiute Shoshone Indian Reservation and Colony which has 4,877 acres of water right land and an additional 560 acres of water right land designated in a suspended classification. Currently there are approximately 750 tribal members residing on the reservation and many are involved in the agricultural economy.

Because of the limited supply of water in Western Nevada multiple users of the water have developed. For example, Lahontan Reservoir has become an extremely popular year-round-multi-use unit of the Nevada State Park System. The Park, consisting of 41,500 acres, offers camping and picnicking around 69 miles of shoreline. Swimming, water skiing, sailing, fishing and boating are very popular as the shoreline of the reservoir has many miles of sandy beaches with trees for shelter from the hot summer sun. Anglers come to Lahontan Reservoir to test their fishing skills on the popular walleye, bass and other warm water species.

Beyond the value of the irrigation project to the economy and livelihood of the people living within the project boundaries, the Lahontan Valley is important to the people of Northern Nevada for recreational use; waterfowl hunting; fishing; and its wildlife habitat in the valued wetlands of Stillwater and Carson Lake.

As in many areas of the West, the available water supply is limited. In Nevada the average precipitation is less than any other state in the union. The Lahontan Valley only receives about 5 inches of rainfall annually. This limited supply of water led to the early adjudication of water rights on the Truckee and Carson Rivers of which the District was a primary party. Since both rivers originate in the State of California and terminate in Nevada, years of negotiation took place between the states which finally resulted in the California and Nevada State legislatures approving the California-Nevada Interstate Compact allocating the waters of the Truckee, Carson and Walker Rivers between the states. Since passage in the 1970's, the states have operated in accordance with the provisions of the compact. The only matter remaining at this time is for the Congress to consent to the provisions of the compact.

Although the water users of the District have had their water rights adjudicated in the *Orr Ditch* and *Alpine* cases, there remains the possibility of further litigation in the river systems if the compact is not ratified and approved. The *Alpine* case adjudicated the rights on the Carson River both in California and Nevada and didn't become final until 1983. At the time that the compact was negotiated and approved by the States, the *Alpine* decree was not final. This has resulted in some concern being expressed that the ratification by Congress at this time will have the effect of overriding the *Alpine* decree with the specific provisions contained in the compact.

I see no reason for concern since the compact only provides for allocating the waters between the states and does not provide specific allocations to individuals as the *Alpine* decree has done. To eliminate any confusion, the record in this matter could indicate that Congress does not intend by the ratification of the compact to interfere in any Decrees that have been entered. This is certainly recognized in the compact by the provisions of the compact which provide the following basic principles:

> (i) Existing rights and beneficial uses are recognized as having the highest priority of use of available waters;
>
> (ii) Waters not needed to satisfy those recognized existing rights and beneficial uses are to be diverted in proportion to water needs of the two states; and
>
> (iii) Uses of water made under federal claims of right in each state are to be considered as benefitting the state in which the use is made and hence are to be charged against the allocation of that state.

The Board of Directors of the Truckee-Carson Irrigation District who are elected by the water users in the District unanimously voted to support the passage of S.2457 in order to bring finality to the allocation of the water between California and Nevada.

The Board Members would be here today to express their support if it weren't for the economics of the agricultural community today. However, they have asked that I convey to you their unanimous support for the passage of S.2457 granting consent of the U.S. Congress to the California-Nevada Interstate Compact.

STATEMENT OF

GEORGE W. LOTT
PRESIDENT OF THE GREENHEAD HUNTING CLUB, INC.

The Greenhead Hunting Club, Inc., has a current membership of four hundred eighty-six whose interests are vitally concerned with the severely limited water supply to lands in Lahontan Valley and specifically within the Newlands Project.

It is our understanding that the California-Nevada Interstate Compact provides only for the allocation of waters between the States of California and Nevada and that ratification of the Compact by Congress would not interfere with allocations as provided by existing decrees on the Carson and Truckee Rivers.

The importance of the allocation of the waters between the States cannot be over-emphasized in terms of agriculture and recreational uses including waterfowl hunting, wildlife habitat, water contact sports, fishing and others.

Therefore, the members of the Greenhead Hunting Club, Inc., hereby endorse and support the passage of S. 2457 granting consent of the U. S. Congress to the California-Nevada Interstate Compact.

GREENHEAD HUNTING CLUB, INC.
George W Lott
George W. Lott,
President

Senator Laxalt. We thank you, Mr. McConnell. We thank you all very much. You have been most helpful.

The next panel consists of Joe Ely, who is the tribal chairman of the tribe; Elvin Willie, tribal chairman of the Walker River Paiute Tribe; and Susan Shown Harjo, who is the executive director of the National Congress of American Indians.

Will you all kindly step forward? Welcome to the hearing. Who is to proceed first?

The record will indicate that Joe Ely will commence the presentation. Thank you.

STATEMENT OF A PANEL CONSISTING OF: JOSEPH H. ELY, TRIBAL CHAIRMAN, PYRAMID LAKE PAIUTE TRIBE; ELVIN WILLIE, JR., TRIBAL CHAIRMAN, WALKER RIVER PAIUTE TRIBE; AND SUSAN SHOWN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Ely. Mr. Chairman, I would like, with your permission, before I give my testimony to submit into the record a letter agreed to by seven high-ranking Federal officials from all previous administrations, from the Kennedy administration through the Carter administration, documenting the consistent opposition of those administrations to the ratification of the California-Nevada interstate compact.

Senator Laxalt. They will all be so filed.

Mr. Ely. Senator Laxalt, distinguished members of the committee, my name is Joseph H. Ely. I am the tribal chairman of the Pyramid Lake Paiute Tribe. Robert S. Pelcyger, our tribal attorney, is also here with me today.

We appreciate this opportunity to address S. 2457, the proposed California-Nevada interstate compact of 1971. We have prepared and submitted a written statement with attachments for the record.

Included in that statement is documentation showing every previous Presidential administration's opposition to ratification of the compact. That opposition is primarily on the grounds that it would involuntary subject the tribe and the United States to its terms, which would take away desperately needed water from the Pyramid Lake's already endangered fishery.

Senator Laxalt, when you introduced S. 2457 on May 15, you inserted into the Congressional Record an accompanying statement explaining the compact. That statement established three basic principles underlying the compact: The first principle being that "existing rights and beneficial uses are recognized as having the highest priority."

The second principle is that "waters not needed to satisfy the recognized existing rights and beneficial uses are to be divided in proportion to the water needs of the two States."

Senator Laxalt, if those basic principles were true and if the compact recognized the existing rights and beneficial uses for the Pyramid Lake fishery, we would not be here today opposing it.

We are here because that is not true, and because the compact discriminates against us. In truth, the compact protects everyone else's beneficial uses except ours. In our case, the compact takes away water that we currently use and need and gives it away to both States to be available for future uses.

I will focus on two examples that clearly illustrate this, article VI(B)(3) and article VI(B)(4); others are contained in our written statement.

Article VI(B)(3) allocates 6,000 acre-feet of firm annual yield from Stampede Reservoir to California. Providing this yield requires about 50,000 acre-feet of Stampede's storage capacity, about 25 percent of the entire reservoir.

Since Stampede Reservoir was completed in 1970, it has been used exclusively for the benefit of the Pyramid Lake fishery. It is the reason that our fish are still alive. The right to that water has been established in court.

By allocating that water to California in article VI(B)(3) and by making that provision binding on the United States and the Pyramid Lake Paiute Tribe, as stated in article XXII, the compact would arguably take away that existing right and beneficial use from us and our endangered species.

Therefore, article VI(B)(3) is contrary to the basic principles on which the compact is supposed to be based. It took 10 years of litigation for the tribe to establish the rights to Stampede Reservoir, and ratification of the compact will arguably undo that right and provide for probably another 10 years of litigation.

The other example: Article VI(B)(4) is an obvious case of blatant discrimination against the Pyramid Lake Paiute Tribe. This article allocates 10,000 acre-feet annually to California, subject to all existing beneficial uses of water for domestic, municipal, industrial and agricultural purposes in Nevada, as determined by Nevada law.

The obvious exclusion from the list of named beneficial uses is the use of water for fish, wildlife, and recreation at Pyramid Lake. This exclusion is not a mistake or oversight, but is a calculated discrimination against the tribe.

This is illustrated by article XIII which states that fish, wildlife and recreation are recognized "as an inseparable part of the public interest," and are therefore "beneficial."

Why, if this is not discriminatory, does it recognize the tribe's fishery as a beneficial use in article XIII, and then when water is allocated in article VI(B)(4) that beneficial use is deliberately excluded?

If all existing rights and beneficial uses are recognized as having the highest priority and the compact does not adversely affect the Pyramid Lake Tribe and its fishery, why is it necessary to bind the tribe to all provisions listed in article XXII?

If the compact did not hurt the tribe, article XXII could be eliminated and a provision similar to those contained in other Western compacts could be added stating that nothing in the compact would be deemed binding upon the tribe's existing water rights or beneficial uses of water for the Pyramid Lake fishery.

The truth is that the compact does hurt the tribe by adversely affecting our existing rights and beneficial uses. So, Senators, I am here to tell you that the compact is not a fair and even application of neutral principles expressed in the explanatory statement in the Congressional Record.

When it comes to the existing rights and beneficial use of water for fish, wildlife, and recreation at Pyramid Lake, the compact does not recognize or protect these rights, but instead sacrifices them in order to make available that water for unspecified new uses in both States.

Ratification of the compact would be directly contrary to the Endangered Species Act. Under that law, the protection and enhancement of endangered and threatened species and the preservation of their critical habitat take precedence over everything else.

Under the compact, the opposite is true. The water that is currently being used and is so desperately needed by Pyramid Lake's endangered and threatened species is taken away and subordinated to unspecified new uses in both States.

This results in further deterioration of an already precarious condition of the Pyramid Lake's endangered cui-ui. In other words, by ratifying the compact, Congress would be doing exactly what the Endangered Species Act is intended to prevent.

Senator Laxalt, we have come a long way since 1940 when the now-threatened Lahontan cutthroat trout became extinct in Pyramid Lake, due primarily to large water diversions to supply the Newlands Federal reclamation project.

The Lahontan cutthroat trout are coming back because of hard work and cooperation between the tribe and the Federal Government, and because of the recognized help and support from you, which we appreciate. Let us not forsake that progress, and let us not take lightly that cooperation which would produce positive results for my tribe and the State of Nevada.

We ask you to defer or defeat S. 2457, and thereby open the way for a voluntary, comprehensive, and equitable negotiated settlement. Settlement is possible and is the only viable and lasting solution to this, one of the West's longest and most bitter water controversies.

Thank you.

[The prepared statement and responses to questions follow:]

PREPARED STATEMENT OF JOSEPH H. ELY

My name is Joseph H. Ely. I am the Chairman of the Pyramid Lake Paiute Tribe of Indians. Robert S. Pelcyger, our Tribal Attorney, is also appearing with me here today. We appreciate this opportunity to address S. 2457, the proposed California Nevada Interstate Compact of 1971.

We have prepared and submitted a written statement with numerous attachments for the record. Those materials document the opposition of every previous Presidential Administration to the ratification of the Compact, primarily on the grounds that it would involuntarily subject the Tribe and the United States to its terms and that it would take desperately needed water away from Pyramid Lake's already endangered fishery.

As recently as last Fall, the Interior and Justice Departments of the Reagan Administration recognized in submissions to the Congress that provisions of the Compact would have to be modified to achieve an overall voluntary and negotiated settlement of the water, fishery and related problems that have plagued Pyramid Lake and the Truckee River for the past century.

Senator Laxalt and other distinguished Senators, I firmly believe, all the members of the Pyramid Lake Paiute Tribal Council firmly believe, and, to the best of my knowledge, every single member of the Pyramid Lake Paiute Tribe firmly believes that ratification of the Compact would destroy the best prospect we have ever had for a settlement which the Tribe wants and I know that you want more than anything else for the people of Northwestern Nevada.

As you know Senators, Pyramid Lake once had a world famous and magnificent fishery which produced vast quantities of the largest Lahontan cutthroat trout in the world as well as cui-ui, the staple of my people's diet. We are cui-ui dokodo, cui-ui eaters. Our fishery was destroyed by upstream diversions, principally to the Newlands Federal Reclamation Project. Current

Truckee River inflows to Pyramid Lake are not sufficient even to insure the continued existence of the cui-ui or to bring the trout and cui-ui to the point where they are no longer threatened or endangered. The water we are currently getting is not enough; we need more. The problem with the Compact is that it would take away significant amounts of the water that are currently flowing into Pyramid Lake.

Every compact and every interstate judicial apportionment has been predicated on the protection and preservation of existing beneficial uses. In its 1984 decision in Colorado v. New Mexico, the Supreme Court held that compelling considerations favor existing uses over proposed new ones and that existing uses must be recognized and protected in interstate equitable apportionments unless they are clearly shown to be wasteful and inefficient and to provide minimal benefits. In their August 1, 1968 letter to the federal representative to the Interstate Compact Commission, the Chairman of the California and Nevada Commissions stated that the California-Nevada Compact "would use as a basis for allocating the waters between the two states the amounts of water presently being used and utilized within the boundaries of each state and, in addition, certain amounts of water which would obviously be needed in the immediate future for areas of rapidly expanding development." When you introduced S. 2457, Senator Laxalt, on May 15, you had inserted into the Congressional record a statement explaining the Compact. That statement sets forth the three "basic principles" underlying the Compact. The first such principle is that "existing rights and beneficial uses are recognized as having the highest priority." The second principle is that "waters not needed to satisfy these recognized existing rights and beneficial uses are to be divided in proportion to the water needs of the two states."

Senator Laxalt, if the Compact had recognized and protected the existing rights and beneficial uses for the Pyramid Lake fishery, we would not be here opposing it. We are here because the Compact discriminates against us. It protects everyone else's existing rights and beneficial uses except ours. The Compact takes away the water that we are currently using and makes it available for future new uses in both States.

I would like to focus on two of the principle examples of what I just described, Articles VI (B)(3) and VI (B)(4). Others are described in our written submission.

Article VI (B)(3) allocates 6,000 acre feet of firm annual yield from Stampede Reservoir to California. Providing this water would require about 50,000 acre feet of Stampede's storage capacity, about 25% of the entire Reservoir.

Since Stampede Reservoir was completed in 1970, it has been used exclusively for the benefit of the Pyramid Lake fishery. It has kept our fish alive. Our right to that precious water was challenged in court, and we won. By allocating that water to California in Article VI (B)(3) and by specifically making Article VI (B)(3) binding on the United States and the Pyramid Lake Paiute Tribe in Article XXII, the Compact arguably would take that existing right and existing beneficial use away from us and our endangered species for the benefit of unknown future uses in California. Article VI (B)(3) is therefore contrary to the basic principles on which the Compact is supposed to be based. At the very least, we would be back in court for another ten years or so of litigation to determine whether or not Article VI (B)(3) supercedes the Endangered Species Act or vice versa. That is one thing that none of us wants or needs -- more litigation.

Article VI (B)(4) is even worse. It allocates the additional yield of up to 10,000 acre feet annually to California, but Nevada has the right to share in that additional yield by bearing the proportionate cost of its development with California. That allocation is expressly subordinated to "all existing beneficial uses of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law."

What is left out from this list? Everything else is protected except the use of water for fish, wildlife and recreation at Pyramid Lake. The effect of this blatant discrimination is that existing beneficial uses of Truckee River water at Pyramid Lake are sacrificed for future new uses in both California and Nevada. Once again, the basic underlying principles of the Compact are violated when it comes to the Pyramid Lake Tribe and the Pyramid Lake fishery.

You may be thinking that the failure to protect fish, wildlife and recreational uses in Article VI (B)(4) was an inadvertent mistake. Let me assure you that it was not. Article VI (B)(4) was amended by the California Legislature. Before it was amended, it specifically protected "all existing beneficial uses of water in Nevada" but then went to state in a proviso that water used for fishery purposes on the Pyramid Lake Reservation in Nevada would not be recognized as an existing beneficial use. The California Legislature then amended the provision to continue the discriminatory treatment but to make it more subtle.

You may be thinking that 10,000 acre feet is not enough water to be concerned about because Pyramid Lake receives an average of about 300,000 acre feet and needs about 400,000 acre feet to maintain its present level. Wrong again. 10,000 acre feet is a lot, especially when you are already short to begin with. But the numbers are misleading. To develop an additional annual yield of 10,000 acre feet requires a storage reservoir with a capacity of about 100,000 acre feet. The water to fill that reservoir can come from only one place, the high spring runoff flows that currently flow into Pyramid Lake. Those are the very flows on which our fish depend for spawning. The loss of those flows, which would be made possible by Article VI(B)(4), would be a devastating and almost certainly fatal blow to the cui-ui who are barely hanging on under existing conditions.

By looking at the Compact, one would think that the uses of water for fish, wildlife and recreation purposes are recognized and protected. After all, Article XIII specifically states that all such uses are recognized "as an inseparable part of the public interest" and are therefore "beneficial." But the reality is different than what appears on the surface. Fish, wildlife and recreation uses at Pyramid Lake are not accorded equal treatment with other beneficial uses. They are not even given second class treatment. They are simply brushed aside, swept under the rug, as if they do not exist. The real world practical effect of Articles VI (B(3) and VI (B)(4) is that existing, beneficial uses of Truckee River water on the Pyramid Lake Indian Reservation are subordinated and sacrificed to unspecified future uses in both Nevada and California.

I have a very simple and basic question to ask of anyone who comes here before you and testifies that the Compact would not adversely affect the Pyramid Lake fishery. You do not even have to read Articles VI (B)(3) or VI (B)(4). All you have to do is look at Article XXII. If the Compact would not adversely affect the Pyramid Lake Paiute Tribe's existing beneficial uses, water rights, claims, interests and existing beneficial uses, then why is it necessary to bind the Tribe to all of the provisions listed in Article XXII? If the Compact would not hurt the Tribe, Article XXII could be eliminated and a provision could be added stating that nothing in the Compact would be deemed to interfere with or impinge upon the Tribe's water rights or the existing beneficial uses of water for the Pyramid Lake fishery or to supercede or be inconsistent with the Endangered Species Act. See how many takers you get for those proposed amendments. And then I think you will understand why the States insist that the Compact's key allocation provisions be made binding on the Tribe.

So, Senators, I am here to tell you that the Compact is not a fair and evenhanded application of the fair and neutral principles expressed in the explanatory statement in the Congressional Record. When it comes to the existing beneficial use of water for fish, wildlife and recreation at Pyramid Lake, the operative principles are that they are not recognized and protected, but are sacrificed and subordinated in order to make possible unspecified new uses in both States. It robs Peter to pay Paul. We are robbed; everyone else is paid.

The Compact is what you would expect from a negotiating process in which all of the Pyramid Lake Paiute Tribe's adversaries and competitors were fully represented at every stage and from which the Tribe was excluded. It proves the wisdom of the previous western water compacts in which any adverse effects on Indian rights were expressly disclaimed.

Ratification of the Compact also would be contrary to the policies adopted by Congress in the Endangered Species Act. Under that law, the protection and enhancement of endangered and threatened species and the preservation of their critical habitat takes precedence over everything else. Under the Compact, precisely the opposite is true; the water that is being used and is so desperately needed by Pyramid Lake's endangered and threatened species is taken away and subordinated to unspecified new uses in both states. This results in further deterioration in the already precarious condition of Pyramid Lake's endangered cui-ui. In other words, by ratifying the Compact, Congress would be doing exactly what the Endangered Species Act is intended to prevent at all costs.

The Compact has never been subjected to a biological analysis pursuant to Section 7 of the Endangered Species Act. The Pyramid Lake Paiute Tribe believes that the conclusion of any such analysis would be that if enacted the Compact would be likely to jeopardize the continued existence of the cui-ui and to result in the destruction of adverse modification of its critical habitat. The Tribe respectfully requests that this Subcommittee ask the Fish and Wildlife Service for a Section 7 biological opinion on the Compact so that the impact of the Compact on the endangered species would be known and could be considered by the Congress in its deliberations.

Ratification of the Compact also would violate Congress' specific commitment to Indian Tribes in Section 16 of the 1934 Indian Reorganization Act. Prior to 1934, Indian tribes had lost two thirds of their land. Section 16 was included to prevent any further losses of their property interests. Tribes voting to be organized under Section 16, such as the Pyramid Lake Paiutes, were explicitly granted the power to prevent all disposition of tribal property by withholding their consent to such disposition. Ratification of the Compact would breach that commitment by making the Pyramid Lake Tribe an involuntary party to its provisions. This would deny us both our existing water rights and the existing course of action to enforce those rights.

This is not the first time that the Pyramid Lake Paiute Tribe has come before the Congress to plead its case and to ask for basic fairness. More than 30 years ago, in 1954, the Bureau of Reclamation formulated the final plan for the Washoe Reclamation Project on the Truckee and Carson Rivers. That plan was like the Compact; everyone else gained at the Tribe's expense.

But the Tribe showed up as an uninvited guest at the Bureau's party. The Tribe had a story to tell and Congress listened. Congress found out for the first time that the Newlands Federal Reclamation Project, which was built at the turn of the century, had destroyed the once magnificent Pyramid Lake fishery. Congress responded by amending the Washoe Project Act to make restoration of the Pyramid Lake fishery a primary purpose of the Project. Since then, under the auspices of the Washoe Project Act and with Senator Laxalt's active leadership and support, Congress has appropriated and invested many millions of dollars for the construction and operation of tribal and federal trout and cui-ui hatcheries for the Marble Bluff Dam and Fishway at the mouth of the Truckee River, and for Stampede Dam and Reservoir. With the help of these facilities and a lot of work, Pyramid Lake once again is producing large numbers of trophy sized lahonton cutthroat trout as described in a recent Los Angeles Times article I have attached to this statement. But water is the essential lifeline which holds everything together; without it the fish and the Tribe are doomed, and there is not enough water under existing conditions, even without the Compact, to ensure the cui-ui's continued survival.

Having come this far toward the recovery of a magnificent and unique natural resource, the Pyramid Lake Paiutes, the cui-ui eaters, ask you not to turn the clock back to the turn of the century, not to forsake the progress that has been made over the past 30 years and not to destroy the value of the federal government's considerable investment in the Pyramid Lake fishery. We ask you to heed the advice of every previous Administration and to follow the example of every previous western water compact. We ask you to be patient, as we have been patient, not to take sides, and not to intervene by imposing an allocation scheme produced by an inherently unfair process that: creates many new problems and solves very few; fundamentally alters the balance of power among the affected parties; takes away our water and gives it to others, and sacrifices vital federal Indian interests and policies.

We ask you to defer or defeat S.2457 and thereby open the way for a voluntary, comprehensive, and equitable negotiated settlement of the West's longest and most bitter water controversy. We ask you to trust us and to stay out of it for now. Congress' time will come; you will be asked to implement a fair, voluntary and comprehensive negotiated settlement. I truly believe that such a just end is in sight.

Los Angeles Times
Saturday, May 24, 1986

PYRAMID LAKE

Large Lahontan Cutthroat Trout Make a Comeback

By EARL GUSTKEY, *Times Staff Writer*

SUTCLIFFE, Nev.—His expedition journal shows that on Jan. 10, 1844, the explorer John C. Fremont rode over a desert-mountain pass in what is now northern Nevada and was startled to see a vast, blue lake.

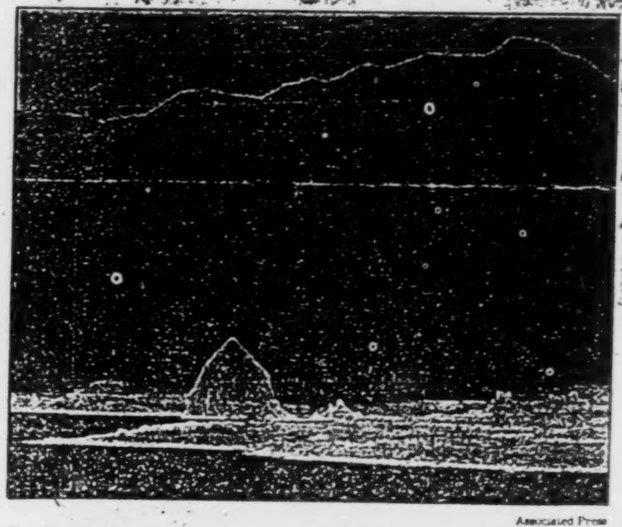
Fremont and his 24-man party, who were looking for a river thought to flow from the Rocky Mountains to San Francisco Bay, traveled down the east shore of the lake. They found a rock island that reminded Fremont of the Egyptian pyramids. So he named it Pyramid Lake.

Fremont also found that the lake contained fish. Big fish. In camp, his party feasted on trout, up to three feet long. His party also discovered a large carp-like fish local Indians call Cui-ui (Kwee-wee).

Pyramid Lake, roughly 32 miles long and 14 miles wide, is about 35 miles northeast of Reno on Highway 445. The lake is actually the last remnant of ancient Lake Lahontan, which geologists say once covered much of northern Nevada, more than 8,000 square miles—roughly the size of Lake Erie.

The trout fishery that Fremont found was to last about 100 years. Before dams were built on the Truckee River, the Lahontan cutthroat trout had evolved into one of the largest native trout species in North America. But the Lahontan cutthroat, which over hundreds of centuries evolved in the Pyramid-Truckee and Carson River-Lake Tahoe water systems, virtually disappeared in the late 1930s and early 1940s, when water diversions from the Truckee River to agricultural lands caused a delta to form at the river's mouth at the lake, blocking upstream spawning runs.

Please see PYRAMID, Page 24



Associated Press

Outlined in the sun is Anaho Island, a rock formation that inspired the name for Pyramid Lake, located 35 miles northeast of Reno.

PYRAMID

Continued from Page 1

Heavy, turn-of-the-century market fishing and the introduction of non-compatible species such as rainbow and lake trout also contributed to the decline of native cutthroat.

In the three decades following the first alteration of the Truckee's flow, in 1906, Pyramid Lake was one of North America's great trout fisheries. Clark Gable used to hide out at Pyramid and catch 20-pound cutthroat. So did former President Herbert Hoover. In 1925, a local named John Skimmerhorn caught a 41-pounder, still believed to be the largest cutthroat ever caught, even though his fish was never submitted as a world record. Evidence exists that native Lahontan cutthroat once reached the 60-pound class.

Early non-Indian fishermen at Pyramid called them "salmon trout."

From roughly 1940 to the early 1960s, deprived of its former inflow volumes of fresh water, Lake Pyramid became virtually troutless. But today, the once fabled Lahontan cutthroat has made quite a comeback. It isn't the same pure-strain Lahontan that Fremont found, but it is a close hatchery relative.

In the winter months, trollers, spin and fly fishermen from the west converge on the big lake to try their hand at 5- to 10-pound cutthroats.

Says U.S. Fish & Wildlife Service biologist Bob Hallock, who works with the lake's fishery: "The unique thing about Pyramid is that while it's not what it once was, it still produces some very big trout. Where else can you have a reasonable expectation of catching a five- to seven-pound trout? I don't know of any other place like that. I've caught 5 to 10 fish over five pounds in one day at Pyramid."

Hallock and other fly fishermen work the shallows on the lake's west and south shores in rubber waders. Spin fishermen cast from high shore rocks.

"Some fly fishermen use inner tubes and swim fins and kick out to deeper water, but that scares me," Hallock said. "Pyramid is a desert lake, and desert storms around here can come out of nowhere. You can be fishing in clear weather, and in a few minutes have thunder and lightning all around you. I've heard of winds blowing guys in tubes clear across the lake, and this is a big lake. You can get awfully cold out there."

Dark wooly worm patterns, fly fisherman Hallock reports, work best during Pyramid's cold months, when cutthroats are in the shallows [illegible]

"Black works best for me consistently, but there are days when purples, dark greens and browns work, too," he said. "And I've even taken trout on whites."

Two summers ago, Ray Johnson, a noted brown trout fisherman from Flaming Gorge Reservoir in Utah, noticed that the International Game Fish Assn. (IGFA) record book was devoid of a cutthroat trout category.

Johnson decided to create one. Between July 21 and July 30

Johnson put six Pyramid cutthroat into the record book, ranging from 9 pounds 2 ounces to 11-9. He caught all the fish trolling, with downriggers, on 2-, 4-, 8-, 12-, 16- and 20-pound test line and carp minnow-patterned homemade lures.

Since then, due in large part to heavier-than-normal Sierra runoff, Pyramid fishing is even better.

Said George Black at Mark Fore and Strike, a Reno tackle shop: "Our annual contest winner this winter was a 16-pound fish. The next two were 15-11 and 15-9. The 15-9 was caught on a fly rod. I know one guy, Jose Silva, who caught a 13-0 fish on four-pound test, but the IGFA turned him down for a record because the scale wasn't certified."

The recent success of Pyramid, Black said, is a triumph of management and the politics of water.

"The fishing has gotten better and better over the last several years. The water volume is up, and that's always a plus, and the Indians who manage the lake have won a couple of key court battles over water rights. Overall, the Indians have done a very good job of managing the resource well."

Another major reason for the cutthroat comeback is a restricted size and bag limits. Minimum size is 19 inches. And the daily limit is two fish."

Pyramid Lake lies entirely within the Pyramid Lake Paiute Indian Reservation. For thousands of years, anthropologists say, people have lived along the lake's shores in well-structured communities, living in caves or rock structures.

Today, the lake's fishery is owned by the Pyramid Lake Paiute Tribe, which also operates a cutthroat and Cui-ui hatchery at Sutcliffe, a small community on the lake's west shore. The 12-year-old Dunn-Cui-ui Hatchery produces roughly 2.5-million cutthroat hatchlings a year, 70% of which survive to 8- to 10-inch size and are planted in the lake.

In the hatchery, there is a 1930s picture of Clark Gable, holding up two trout, each about 2½ feet long. In another photo, a small Indian boy stands next to a beached skiff, on which are tied 20 trout, all in the 15- to 20-pound class.

The size of Pyramid Lake's cutthroats once made Ripley's Believe It or Not, after four men on July 26, 1935, caught 60 trout, the smallest of which was nine pounds.

Lahontan cutthroat trout are distinguished by a wide, pink side band. Its entire body is spotted and its name derived from two reddish stripes beneath the jaw.

This spring, the hatchery-raised descendants of Pyramid's original cutthroats must have thought it was like old times. A dam that blocks cutthroat upstream spawning migrations, Derby Dam, about 20 miles upstream on the Truckee River, was partially breached by heavy Sierra runoff in February.

A portion of the earthen part of the dam partially collapsed, and biologists estimate roughly 1,500 cutthroats moved as far as Reno and spawned. Once, a cutthroat could swim all the way from Pyramid to Lake Tahoe.

When Fremont discovered Pyr-

and Truckee river systems, even in Lake Tahoe. Even today, wild, pure strains of ancient Lahontan cutthroats can be found in a half dozen or so hard-to-find streams on the Sierra's west slope.

Today, three hydro-power stations on the Truckee near the California-Nevada line also block the one-time unobstructed path of Tahoe-bound cutthroat.

□

Phil Curri of Reno, standing in hip-deep water near Pyramid's southwest shore one recent afternoon, was using a long casting rod to hurl a lure 60 to 70 yards out upon the water, lightly chopped by an early afternoon breeze.

"The prime time for these cutthroats is the coldest part of the winter," he said. "We have a saying up here—the fishing's best when it's cold enough to grow icicles on the end of *your* nose. About this time of year most of the fish go into deep water to keep cool, but sometimes in April or May, you can pick up a stray."

Almost as he said it, three fly fishermen a few hundred yards south of where Curri was casting let out whoops. A cutthroat splashed at the surface, where it had been suckered by a fly.

"See, a lot of locals quit fishing the lake entirely at the end of February, but the shallow water fishing doesn't shut off entirely like they think it does. I can catch [and release] 10 or 12 nice fish in a few hours in cold weather here, and I can catch about half that many on a warmer day, like today. And on your day off [Curri is a blackjack dealer], that still beats staying home."

Even Reno-area residents will argue over what is prime time for Pyramid cutthroats. Many adhere to the "icicles on the nose" theory.

But some don't.

George Black, of Mark Fore and Strike: "That cold-weather theory is a myth. The best periods are during rising or falling water temperatures. When the temperature is rising in February and April and when it's going down in October and November are the best times."

□

The drive from Reno to Pyramid Lake on Nevada 445 takes one quickly out of Reno's northern suburbs and into desolate high-desert country, where rolling sagelands are surrounded by high buttes and juniper-studded hills.

The first view of the lake comes abruptly, from the top of a pass. Down below, the soft blue lake lies in startling contrast to the brown-tan sagelands. Flood washes from canyons down below travel twisting paths to the lakeshore.

The 750-acre island that Fremont thought looked Egyptian-made is now called Anaho Island, and most of it was declared a National Wildlife Refuge in 1913. Anaho is one of eight nesting colonies of American white pelicans in the western United States and Canada. Double-crested cormorants, California gulls, great blue herons and sometimes Caspian terns also nest on the island.

The entire Pyramid Lake region is lightly populated. Sutcliffe, four miles up the road, has no more than 50 homes. There is a feeling of vast emptiness and solitude to this high-desert country. For the most part, the only sound is the wind. The east shore is roadless still.

You can't help but wonder at what little change has occurred since that day in 1844 when Fremont passed this way, looking for a river that flowed only in his imagination.

S.2457
California-Nevada Interstate Compact

Responses to questions presented by Senators
Hatch and Grassley to the Pyramid Lake Paiute
Tribe of Indians

Question 1 - You have charged that this Compact is in violation of the Clean Water Act, the Endangered Species Act, and several state environmental quality review acts among others. Could you be more specific, and elaborate on these points?

Response 1 - The Tribe's July 15, 1986 Written Prepared Statement on S.2457 submitted to the Subcommittee on the Constitution states (at page 8):

> The California-Nevada Compact was negotiated in the 1960s and adopted by the two States in 1970 and 1971, before the enactment of the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the Endangered Species Act, as well as other critical environmental legislation of the '70s and '80s. The Compact has never been analyzed under NEPA, CEQA, or Section 7 of the Endangered Species Act, and its provisions are directly contrary to the highest priority status accorded endangered and threatened species under the Endangered Species Act. The Compact is therefore obsolete and inconsistent with existing federal environmental, as well as Indian, policies.

The Tribe's July 15, 1986 Written Prepared Statement subsequently discusses at pages 12-14 the adverse impacts of two specific provisions of the Compact, Articles VI(B)(3) and VI(B)(4), on Pyramid Lake's endangered and threatened species. We will be glad to elaborate on these points.

a. NEPA and CEQA - NEPA and CEQA are environmental full-disclosure laws. They require detailed environmental statements or assessments to evaluate the impact of proposed actions, alternatives to proposed actions, and ways to mitigate the effects of proposed actions as part of the decision-making process. In today's world, the preparation of such analyses is recognized as an essential element in the development and implementation of sound public policy. Yet these laws were not in existence when the Compact was originally proposed and adopted by California and Nevada in the late 1960s and very early 1970s.

Adoption and ratification of the Compact clearly is a major action that would have a significant impact on the environment. Yet the Compact has never been analyzed and evaluated pursuant to NEPA, CEQA or any other environmental disclosure laws. While NEPA and CEQA may not technically be applicable, compliance with their spirit and underlying policy certainly would be useful and advisable. In the absence of detailed environmental assessments, the debate on the Compact has been abstract and sterile, almost completely lacking in concrete and specific realities.

b. Endangered Species Act - The Endangered Species Act accords the highest priority to the preservation of endangered species and the protection of their critical habitat. See TVA v. Hill, 437 U.S. 153 (1978). Ratification of the Compact would directly conflict with that national policy because, as explained in the Tribe's July 15, 1986 Prepared Written Statement (pages 3-15 and 20-21), Articles V(D), VI(B)(1), VI(B)(3), VI(B)4 and VII of the Compact would take away water that currently is being used beneficially for the preservation of Pyramid Lake's endangered cui-ui and their critical habitat. See Carson-Truckee Water Conservancy Dist. v. Clark, 741 F.2d 257 (9th Cir. 1984), affirming, 549 F.Supp. 704 (D.Nev. 1982), cert. denied, 105 S. Ct. 1842 (1985). The loss of that water definitely would jeopardize the cui-ui's continued existence.

Article VI(B)(4) is a particularly egregious instance of conflict between the Compact and the Endangered Species Act. Under that provision California and Nevada have the right to develop new facilities to produce up to 10,000 acre feet per year. That allocation is expressly subordinated to all beneficial uses in Nevada for domestic, municipal, industrial and agricultural purposes. Water used for Pyramid Lake's endangered fish is deliberately excluded from the list of protected beneficial uses. In fact, Article VI(B)(4) mandates that the 10,000 acre foot allocation be satisfied by capturing and storing the water that now flows in the lower Truckee River during the Spring runoff when the cui-ui are spawning in the River. These are the very flows that are now keeping the endangered cui-ui from becoming extinct. Article VI(B)(4) therefore permits and encourages precisely what the Endangered Species Act is intended to prevent "at all costs." TVA v. Hill, supra. The practical effect of ratifying the Compact would be to exempt the Truckee River from the Endangered Species Act.

Section 7 of the Endangered Species Act, 16 U.S.C. §1536, requires that the Fish and Wildlife Service prepare a biological opinion to assess the impact of any proposed federal action on endangered or threatened species. This requirement may not technically be applicable to the proposed ratification of the Compact by Congress, but, like compliance with NEPA, the preparation of such an opinion undoubtedly would produce extremely useful and illuminating information. Without such an opinion, Congress would be operating in the dark, without knowing the consequences of its decision on Pyramid Lake's threatened and endangered fish.

In enacting and reenacting the Endangered Species Act, Congress has directed all federal agencies to ascertain how their proposed actions would affect endangered and threatened species. They cannot take any such actions that would jeopardize the continued existence of such species or adversely affect their critical habitat. The Act also establishes an elaborate administrative mechanism to obtain exemptions in carefully circumscribed conditions when extraordinarily significant federal interests are involved there are no reasonable and prudent alternatives. There is no logical reason why congressional decisions should not be governed by the same criteria. The Pyramid Lake Paiute Tribe believes that the Constitution Subcommittee should either request a section 7 biological opinion assessing the impact of the Compact on Pyramid Lake's endangered and threatened species before acting on S.2457 or add an amendment to the Compact stating that the Compact shall not in any way interfere with or infringe upon the fulfillment of all of the policies, terms and conditions of the Endangered Species Act.

c. Clean Water Act - The goal of the Clean Water Act is to insure fishable/swimmable waters of sufficient quality for all beneficial uses. The Compact allocates and regulates four major interstate bodies of water, but entirely ignores the objective of the Clean Water Act.

There are two principle water quality problems on the Truckee River, high temperatures and excessive nutrients. Both problems adversely affect the Pyramid Lake fishery. One obvious way to improve the existing situation would be to develop a better way of managing and coordinating the existing reservoirs so that more water flows in the lower Truckee River during the critical spawning period. Increasing releases from those reservoirs would lower the temperatures and dilute the nutrient levels.

Water quality is definitely an interstate issue that can and should be addressed in the Compact because the reservoirs are located in California and the problems occur in Nevada. The only mention of coordinating the operation of the reservoirs in the Compact is in Article XII. That provision is manifestly inadequate, however, because it does not provide any substantive solution. It merely authorizes the Compact Commission to prepare plans for the coordination of reservoirs, but the owners of the reservoirs have the right to refuse to participate in any such plan. Since the current operations on the Truckee River have been maintained without significant change since 1914, it is highly unlikely that the purely voluntary new arrangements contemplated by Article XII will ever be implemented.

The Walker River provides another example of a water quality problem that should be addressed in the Compact. Flows in the lower Walker River, entering the Walker River Indian Reservation, are often too saline for effective irrigation. Earlier drafts of the Compact included a provision addressing that problem, but the Compact adopted by the two States is silent on the subject.

It appears from the Compact Commission's responses to the Interior Department's comments on the 1965 Draft Compact that the Commission made a deliberate decision to delete all references in the Compact to water quality. The reason for that decision is not known to the Pyramid Lake Paiute Tribe.

Question 2 - Has the EPA or U.S. Park Service (Department of Interior) done any studies on this matter? What do they say?

Response 2 - To the best of our knowledge, neither EPA nor the Park Service has addressed any of the problems raised by the Compact.

The Park Service prepared reports discussing the value of Pyramid Lake as a nationally significant outdoor recreation resource many years ago. EPA has been involved with Truckee River water quality problems, primarily in connection with its grants for the enlargement and improvement of the Reno-Sparks Sewage Treatment Plant. It has prepared Environmental Impact Statements on those projects, but the primary focus of those reports is on ways to improve the treatment of the plant's sewage effluent. EPA has not considered water quality in conjunction with all of the water right, water allocation and water management issues involved in the Truckee River system. EPA has noted, however, that the upstream Truckee River reservoirs could be utilized more effectively to improve water quality in the Truckee River between Reno and Pyramid Lake.

Question 3 - You maintain that the ratification of the Compact would result in, among other things, the loss of two species of fish found only in that area. Besides the loss of the fish, what other effects, if any, would result?

Response 3 - The Tribe's testimony is that ratification of the Compact would result in the loss of the cui-ui, which is found only in Pyramid Lake. The Lahontan cuthroat trout is not unique to Pyramid Lake. Its continued existence in Pyramid Lake would be jeopardized if the increased upstream diversions authorized by the Compact ultimately reduced the volume of inflows to Pyramid Lake to the point where the resulting increase in the Lake's salinity makes it unsuitable for the trout or interrupts crucial links in the food chain on which it depends.

Loss of the Pyramid Lake fishery would have a devastating impact on the Pyramid Lake Paiute Tribe. The Tribe obtains most of its income from the sale of fishing and boating permits. The largest single employer on the Pyramid Lake Reservation by far is Pyramid Lake Fisheries, the tribal organization responsible for restoration and preservation of the Pyramid Lake fishery. It employs approximately 30 tribal members or spouses of tribal members. In addition, the cui-ui has immense cultural value to the Pyramid Lake Paiutes, who are "the cui-ui eaters." Loss of the fish would destroy the Tribe's livelihood, its existing programs and its very identity.

Destruction of the Pyramid Lake fishery would deprive many millions of Americans, as well as foreign visitors, of a unique, high quality resource, a national treasure. Restoration of the trophy trout fishery at Pyramid Lake to its full potential value also would be a major economic boon to the entire region. Many additional visitors would be attracted to northwestern Nevada to take advantage of that unique recreational opportunity. Destruction of the fishery therefore would be a major and irreparable loss to the nation as well as to the region.

In addition, ratification of the Compact would alter the status quo in ways that would make it much more difficult, if not impossible, to achieve an overall negotiated settlement. See the Tribe's July 15, 1986 Written Prepared Statement at 17-20. California, which has a major role in the overall management of the Truckee River because all of the reservoirs are located in California, would have all of its needs met by the Compact and therefore would have little or no incentive to negotiate any further. Ratification of the Compact also would diminish the settlement incentive for many Nevada entities, including the State.

The potential settlement encompasses many interests other than the Pyramid Lake fishery including water for domestic and municipal needs in Reno and Sparks, irrigation on the Newlands Reclamation Project, the region's wetlands, and the preservation of the clarity of Lake Tahoe. Owing to the complex and interrelated nature of the area's water management problems, all of these interests stand to be affected by ratification of the Compact. For this reason, the issues raised by and addressed in the Compact should not be isolated and segregated. Rather, they should be treated in conjunction with the many other vital interests that are affected by the allocation, management and distribution of the waters of the Truckee River system.

The Pyramid Lake Paiute Tribe generally agrees with the ideas and approaches toward negotiations suggested by the National Audubon Society and the other environmental organizations in their testimony opposing S.2457 and in their written responses to the Subcommittee's questions.

Senator **Laxalt**. We thank you very much for an excellent statement, Mr. Ely.

Who is next?

STATEMENT OF ELVIN WILLIE, JR.

Mr. **Willie**. I will go next.

My name is Elvin Willie. I am the tribal chairman from the Walker River Tribe.

Senator **Laxalt**. Please proceed, Mr. Chairman.

Mr. **Willie**. OK. I would like to ask that our written, prepared, detailed testimony be presented and filed with the committee.

Senator **Laxalt**. It will be so filed.

Mr. **Willie**. OK.

Senator **Laxalt**. Incidentally, for the members of the panel, we have several questions here that have been addressed and submitted to me, and if it is acceptable, we will submit those to you after the hearing.

Please proceed.

Mr. **Willie**. Since the creation of the Walker River Reservation in 1859, the United States has consistently stated that the primary thing they wanted to do with the Indians was to have us develop our agricultural lands.

Those Federal obligations can only be satisfied by providing an increased water supply to the reservation. We wish to ensure that the compact is not used to frustrate the fulfillment of those past commitments.

In short, considerably more attention must be paid to the compact's impact on the Walker River. The tribe's fears over the compact are triggered by the fact that California and Nevada have insisted in article XXII that certain key provisions must be binding on the United States and the affected Indian tribes.

My understanding is that this is not the usual practice in other water compacts. Why do the States here demand that the compact bind the tribes if those provisions do not limit our rights in some fashion?

As mentioned earlier, previous administrations have opposed the compact since its initial inception. This morning, we heard some consent language proposed by the administration. Our first impression is that it is a good concept and we would be willing to support the compact if that is made part of the language of the bill and not part of the legislative history.

Federal objections to the compact have never been addressed in a meaningful fashion by the State of Nevada or others who now propose ratification of the compact. Instead, those parties simply point out the fact that various low-level BIA officials attended previous meetings during the compact commission hearings back in the 1960's and 1970's.

This provides no basis to bind the tribes. First, it was always clear that the United States did not intend to be bound by the compact. Statements have been made to that effect since 1960.

Second, the Federal employees who attended the negotiating sessions were never given a fair opportunity to present their views. For example, following the final drafting of the proposed compact, various Interior agencies met with the Federal representative to the compact negotiations to convey their views of the problems associated with the proposed compact.

George Hedden, one of the individuals cited by the proponents as a BIA official who concurred with the language of the compact, stated:

> Over the years, I have felt that the representatives of the agencies of the Department of the Interior were tolerated. They were there as observers; they were not there as active participants. Their views were not solicited.

And I think most importantly, the compact has never been endorsed by the Tribal Council of the Walker River Tribe, the governing body.

In this era of self-determination, and given the present administration's commitment to a government-to-government relationship with Indian tribes, it is disturbing that the compact supporters urge ratification of an agreement binding the tribes when the tribes did not participate in the negotiations.

Very shortly, our tribe will be filing a motion in Federal court to intervene in the case of *United States* v. *Walker River Irrigation District*. Once a party to that case, the tribe will move to modify the decree to provide water for our unmet needs.

It is important to understand that the tribe is filing this litigation because it is the only way that we see to focus attention on the tribal problems along the Walker River. It is plain to us that the best way—and I think people all along the river agree that the best way to solve the problems of the Walker River is to increase storage facilities and to increase efficiency on the river. Litigation will not do that, but we must be certain that this legislation does not injure our court case.

Last fall, it was suggested that the compact does not limit the tribe from advancing any and all claims against all water users in Nevada on the Walker River, and that the compact does not bolster in any way claims to water of our upstream neighbors.

Needless to say, if that is wrong, the tribe will be forced to press its claims for compensation against the United States.

The first issue which arises under this new interpretation is whether the amount of water available to Nevada is sufficient to meet the tribal claims. Clearly, as we have heard earlier, California water will be off limits to any claims to meet some of our unmet needs.

The compact supporters suggest that it is only unappropriated water which will be off limits. But what about the existing uses? The compact itself acknowledges that the amount of water devoted to California uses is not known.

In conclusion, the Walker River problems, similar to the Truckee River problems, are substantial and require resolution. It is our belief along the Walker River that the best hope for a lasting solution is through a consensus of all parties involved.

This compact should not become an obstacle which prevents the obtainment of that goal or, in the event that a solution is not achievable, prevents the tribe from advancing its claims through the courts.

Mr. Chairman, I would like to thank you for allowing us to present our views from the Walker River Tribe.

[The prepared statement follows:]

PREPARED STATEMENT OF ELVIN WILLIE, JR.

My name is Elvin Willie, Jr. I am the Chairman of the Walker River Paiute Tribe. I appreciate the opportunity to present our Tribe's views regarding the California-Nevada Compact. I ask that our detailed comments be made a part of the record. In the interest of time, I will try to summarize our concerns over the Compact's effect on the Walker River.

Since the creation of the Walker River Reservation in 1859, the United States has consistently and repeatedly promised that the lands of the Reservation would be developed for agricultural purposes. Those federal obligations can only be satisfied by providing an increased water supply to the Reservation. We wish to ensure that the Compact is not used to frustrate the fulfillment of those past commitments. In short, we have many questions about the Compact and believe that considerably more attention must be paid to its impact on the Walker River.

The Tribe's fears are triggered by the fact that California and Nevada have insisted in Article VIII that certain key revisions of the Compact must be binding on the United States and the affected Indian Tribes. My understanding is that the usual practice is not to make interstate compacts on binding on Indian Tribes. Why do the States here demand that the Compact bind the Tribe if those provisions do not limit our rights in some fashion?

As early as 1960, federal representatives advised the Nevada and California negotiators that the United States was unwilling to be bound by the terms of the Compact. The United States' refusal to be bound was well understood by both California and Nevada who as early as 1966 were considering the possibility of overriding the federal position. The Compact's proponents now urge Congress to complete that task, whatever the impact on tribal and federal interests.

Of course, since the Compact's initial proposal in 1969, four Administrations have opposed the Compact, in part because of its adverse effect on the Walker River Reservation.

The federal objections to the Compact have never been addressed in a meaningful fashion by the State of Nevada or others who now propose ratification of the Compact. Instead, those parties point simply to the fact that various low level BIA employees attended parts of the negotiating sessions of the Compact and were sometimes accompanied by tribal members. Those statements are misleading. First, it was always clear that the United States did not intend to be bound by the Compact. Second, the federal employees were never given a fair opportunity to present their views. Immediately following the final drafting of the proposed Compact, various Interior agencies met with the federal representative to convey their views of the problems associated with the proposed Compact. George Hedden, one of the individuals, cited by the proponents of the Compact as a BIA official who concurred in the language of the Compact stated:

> The second point on procedures I would make has to do with the participation in the proceedings of the joint commission meetings by the agencies of the Department of the Interior. Over the years I have felt that the representatives of the agencies of the Department of the Interior were tolerated, they were there as observers, they were not there as active participants. Their views were not solicited, and the proceedings of the Commission were of such a nature that there was not a great opportunity for the agencies to present their views either personally or through the individual who was designated as a departmental representative. . . . But outside of the one Bureau [Reclamation], I have felt that the other agencies have just been witnesses to the proceedings, very largely--this is in the direct proceedings. . . . (emphasis added)

Most importantly, the Compact has never been endorsed by the Tribal Council of the Walker River Tribe--its governing body. In this era of "Self-Determination" and given the Administration's commitment to establishing a "Government to

Government" relationship with Indian Tribes, it is disturbing for the Compact supporters to urge ratification of an agreement binding the Tribes, when the Tribes did not participate in the negotiations.

I will briefly indicate some of the problems in the Compact. The rights granted by the Compact would only irrigate approximately 7,000 acres. That would provide less than six acres of irrigated land for each tribal member. The tribal needs are far greater. The rights provided under the Compact do not fulfill the government's earlier commitment to provide water for 10,000 acres of allotments and they do not provide water for the land restored our Reservation in 1936.

Very shortly, the Tribe will file a motion to intervene in United States v. W.R.I.D. Once a party, the Tribe will move to modify the decree to provide water for our unmet needs. It is important to understand that the Tribe is filing this litigation because it is the only way to focus attention to the tribal problems. It is plain to us that the best way to solve the problems on the Walker River is to provide additional storage and increased efficiency on the River. Litigation will not do that, but we must be certain that this legislation does not injure our court case.

Last fall, it was claimed that the Walker River Tribe's concerns could be resolved by emphasizing Article XVIII of the Compact. As a result, it was suggested that the Compact does not limit the Tribe from advancing any and all claims against all water users in Nevada on the Walker River and that the Compact does not bolster in any way claims to water of our upstream neighbors. Needless to say, if that is wrong, the Tribe will be forced to press a claims for compensation against the United States.

The first issue which arises under this new interpretation is whether the amount of water available to Nevada is sufficient to meet the Tribal claims which may have a relatively junior priority. Clearly, under the Compact, California water will not be available to meet our needs. Yet the Compact itself acknowledges that the amount of water devoted to California is not known today. See Article VIII A. 4(a).

Also, the various other matters described in our detailed comments must be addressed.

In conclusion, the problems on the Walker River are substantial and require resolution. The best hope for a lasting solution is through consensus reached in discussions with all affected parties. The Compact should not become an obstacle which forecloses the obtainment of that goal or in the event that a solution is not achievable, forecloses the Tribe from advancing its claims in court.

Thank you. I would be pleased to answer questions.

Senator **Laxalt**. We thank you very much, Mr. Willie.

Lastly, do I pronounce that name—is it Harjo?

Ms. **Harjo**. Yes, Senator, it is.

Senator **Laxalt**. Will you proceed, please?

STATEMENT OF SUZAN SHOWN HARJO

Ms. **Harjo**. Thank you. It is the name of the warrior society of the Creek Nation and it means "magic in battle."

My name is Suzan Shown Harjo and I am Cheyenne and Creek. My citizenry is in the Cheyenne and Arapaho tribes of Oklahoma, and I am the executive director of the National Congress of American Indians, which is the oldest and largest national Indian organization.

I appear here today on behalf of the member governments of our organization, as well as the individuals, to express in the strongest possible terms our opposition to that portion of the compact that would interfere with and, in fact, wipe out the rights that these gentlemen have been talking to you about—the water rights of the Pyramid Lake, Walker River, and other tribes in Nevada.

It is very disturbing to be at this hearing and hear witnesses describe how it is easier and more expedient to run roughshod over the tribal rights than it is to create a forum, or allow a forum to do its work, that would produce a consensual agreement, and failing any sort of agreement, that then the rights to pursue the constitutional rights of the tribes would be foreclosed.

I am not quite sure whose system of justice this is, but this was not my understanding of the American system of justice.

Indian country is watching these proceedings. This is a situation where we are seeing and have seen truth turned inside out, and where we have seen Indian people who were not parties to negotiations been told to their faces here at this hearing that they were parties to negotiations.

Now, any sort of revisionist history here at this hearing will not make them have been parties if they were not, in fact, parties. No wiping out of Indian rights or demolition of justice in this matter is going to go unnoticed in Indian country, where we are constantly being told to abide by the rules, to go through the system of justice because it will provide a measure of justice in the end.

Any kind of trodding, as this legislation would hope to do, on the Indian rights would not go unnoticed, not only in Indian country but among the world community of nations, which I think watches very carefully what the United States does with regard to the least of its people numerically and economically and in other ways.

I think this whole business that has been discussed today is a really good reason or a really good example for why the Founding Fathers, in their wisdom, nationalized Indian issues to begin with and did not leave them to the States as a backyard, back-door issue.

I think there is a really good example here of why Chief Justice Marshall called the States the deadliest enemies of the Indians. I hope that in 1986, we can make that prophecy not come true.

Thank you for your time.

[The prepared statement follows:]

PREPARED STATEMENT OF SUSAN SHOWN HARJO

Mr. Chairman and members of the subcommittee, good morning, I am Suzan Shown Harjo of the National Congress of American Indians and I speak here today, on behalf of our membership, in opposition to ratification of the California-Nevada Water Compact. We are alarmed by the process through which the Compact was negotiated and by the dangerous precedents that ratification of it would set. First, I will discuss the unfair process which brought about the Compact. Then, I will explore the dangerous precedents that ratification would establish with respect to long-recognized rights of American Indians. Finally I will conclude by looking at the Compact in terms of of President Reagan's stated policy regarding American Indians.

When Senator Laxalt introduced S.2457 in May of this year, his statement printed in the Congressional Record (Volume 132, at S.6053), asserted that existing rights were recognized in the Compact as having the "highest priority of use of available waters." If that were the case and the rights of the Pyramid Lake Paiute Indians were protected by the Compact, I would not be here today. The language of the statement cannot possibly conceal the adverse impact ratification would have on the Pyramid Lake Indian Reservation and the Tribe's fishery. In addition, the language of the Compact, itself, obscures the actual impact it would have on important rights and obligations of the federal government. Whatever its intent, this bill could hardly be labeled as one that protects the rights of Native Americans.

At a cursory glance, the language of the Compact makes it appear as if the rights of Native Americans will not be compromised. The language of the bill seemingly protects American Indian rights as in Article XXI of S.2457:

> Except as provided in Article XXII nothing in this compact shall be construed as:
> (A) Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

However, close reading of Article XXII reveals otherwise, significantly deflating the grandiose promises of the preceding article. Article XXII states:

> the following provisions of the compact shall be binding on the agencies, wards and instrumentalities of the the United States of America.

The stipulations of this specific clause overides and makes illusory the general promises to protect American Indian rights in article XXI.

A notable difference between the two clauses, is that this latter section does not dare to specify American Indians. Rather, this section of the legislation clearly states that the Compact shall be binding upon "wards" of the United States. The committee should not be fooled by the ingenious draft's language. Passage of the bill means that a Native American tribe, often referred to in federal law as wards of the United States, will be bound by this Compact to which it was not originally a party. The Tribe will be bound to this agreement, even, when seeking protection of its legitimate rights.

Other water rights disputes have been settled through negotiations, why not this one? For example, look at H.R.4468, the San Luis Rey Indian Water Rights Settlement Act. This measure enjoys the support of more than three-quarters of the California Delegation and is testimony to the support of those legislators for truly voluntary, fair and reasonable negotiated settlements of American Indian water rights disputes.

From the initial negotiations of the Compact, the interests of the Pyramid Lake Paiute went unrepresented. Neither the United States government nor the Tribe were included as parties during the negotiations over the Compact. Ratification of this compact would cause special problems for the Tribe because it would take away incentives for the Compact's two parties to come to the bargaining table with all the affected parties and negotiate a fair settlement.

The Congress is, in effect, asked to ratify the Compact as a fait accompli. Not only would Congressional ratification make a mockery of the democratic process, but the ratification of such an ill-conceived Compact would establish dangerous precedents. Past water compacts explicitly provided that the rights, claims and interests of American Indian tribes would not be adversely affected. Allowing two states to divide precious water rights with flagrant disregard of federal obligations to American Indians gives other states the impression that they have a carte blanche to renegotiate long respected treaties settling water rights disputes with American Indians. The smooth functioning of countless communities depends on the continued and certain supply of water. The possible cessation of steady water supplies poses a severe threat to their economic stability. Ratification of this Compact means other compacts could be negotiated. At a minimum this would create uncertainty by putting long agreed to divisions of water rights, as well as the rights to other resources, up for grabs. I fear that in such divisions, as in this case, American Indian governments would be on the losing end.

Besides redistributing existing water rights, the compact provides for state enforcement of existing federal responsibilities. This is cause for concern for several reasons. First of all, this is unconstitutional. As the California-Nevada Commission is set up by the Compact, its members have authority to exercise its conferred power of enforcement, but its members are not appointed in conformance with the Appointments Clause of the Constitution. They are not "officers of the United States" and cannot be granted authority to enforce any rights that are grounded solely in federal law.

Second of all, in this case, the states responsible for the administration of this controversial Compact, openly compete for water rights with a tribe of Native Americans. Ratification would make a bi-state commission, composed of adversaries to the

Pyramid Lake Paiute Tribe, responsible for protecting and enforcing the Tribe's rights. Such an arrangement would most likely lead to disasterous consequences for the Tribe. Any commission distributing, protecting and enforcing water rights should be created by a fair, just and reasonable process and should represent all affected communities.

Ratification would mean nothing less than the Congressional rejection of federal responsibility for the protection of Native American rights. In this particular case, it is the responsibility to provide the most fundamental of rights, rights to water and livelihood, especially when rights to the Lake constitute the primary reason for which the reservation was established. Failure to protect existing water rights and water uses would deprive the Tribe of fish harvests necessary to the Tribe's self-sufficiency.

How can a society predicated upon justice enact such a measure? Passage of this bill would send a clear signal that Congress is receptive to "resolving" conflicts over American Indian resources by abrogating American Indian rights, ignoring federal trust responsibilities and making tribes involuntary parties to arrangements negotiated by their adversaries.

Moreover, ratification of the Compact would badly disrupt United States - Native American governmental relations. The fiduciary relationship between the U.S. and an Indian government would be breached, leaving little basis for American Indians to retain any remaining trust in long-held commitments. The Compact is clearly inconsistent with stated United States policies regarding Indian Nations. Ratification of this Compact will surely spawn hardship and bitterness. Ratification bodes ill for the future of good, productive relations between the U.S. and Indian Nations.

In concluding, let me draw your attention to President Reagan's stated Indian Policy. Passage of this bill would contradict official White House policy. In the President's 1983

Indian Policy statement, he criticize U.S. actions of another era, "Instead of fostering and encouraging self-government, federal policies have by and large inhibited political and economic development of the tribes." In this case, ratification of the Compact would impoverish the Tribe and inhibit it from supporting itself.

This Compact itself violates the President's commitment to resolving water rights disputes through negotiations with the full participation of the federal government. When the President vetoed an early version of the Southern Arizona Water Rights Settlement Act, he emphasized that he "strongly" believed that negotiations are "the most appropriate means of resolving Indian water rights disputes". He went on to say that:

> I can only in good conscience approve legislation intended to implement a settlement if the United States has been a major party in the negotiations.

Since the United States was not a major party in negotiations over the Compact, it would astonish me that this administration could come to support it.

President Reagan has stated:

> This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized Indian tribes.

Ratification of the Water Compact is inconsistent with President Reagan's stated policy and promise. The Compact strips the Tribe of its resources and usurps the Tribe's authority. I hope that you stand behind that policy and will say "No" to this Compact. It is certain that passage of this bill would adversely affect relations between the federal and Indian governments.

Thank you for asking for the views of the National Congress of American Indians.

Senator Laxalt. Thank you very kindly for your statement.

There has been discussion here about the so-called saving language that the administration proposed. Have any of you had an opportunity to focus on that? Mr. Willie referred to it, and you thought, I think conceptually at least, that it sounded like good news. Is that correct?

Mr. Willie. It does answer some of our concerns, yes.

Senator Laxalt. Chairman Ely, how about you?

Mr. Ely. Yes; we have seen a copy of that particular testimony, and we would be willing to consider the language, as such.

Senator Laxalt. Well, that is certainly good news. I would hope that we can continue negotiating here while you are all here in town. We do not have logistical problems that we always encounter when everybody goes everywhere.

If we could concentrate in the next day or two in seeing whether or not the language in question could be used as a bridge to effect a settlement here, I would like to see that happen. I have indicated that to you many, many times in the past.

I would hope that we all give concerted attention here in the next several hours to sit down and see if there is something we can work out. I would much prefer that result, and I know I speak for the members of the subcommittee when I make that statement.

Mr. Abbott raises a procedural question. In the event we are able to arrive at something here that would be acceptable to the two of you as representatives of your respective tribes, do you have authority to bind the tribe now or would this require going back to the tribe, as we experienced before?

Mr. Ely. In my particular case, I think that it is important to note that when we arrived in Washington and were given an opportunity to look at these alternatives and additions that might be possibly made in the compact, it is a very new concept to us, in that for the last 16 years the State of Nevada has said, and it is a matter of testimony on the bill, S. 1558, that they were unwilling to change any portion of the compact.

So, being unprepared to deal with this, I would say that we can consider that language, but my constitution and our Government prohibits myself making a binding decision on the tribe and I would have to take it back to the council.

Senator Laxalt. We understand. What do you estimate, Mr. Chairman, would be the turnaround time in the event that would happen?

Mr. Ely. I would say optimistically that the very soonest that could happen would be probably 3 to 4 weeks.

Senator Laxalt. We do not have that kind of time.

Mr. Ely. With all due respect, Mr. Chairman, all I can say is we have been proposing amendments to the compact for 16 years; it is also a matter of record in last year's testimony. And now we are pressed against the wall with, again, another last-minute change that we have to consider.

We still have to consider and go through the due process of our constitution.

Senator Laxalt. We understand that. Is there any method in which that time could be expedited? We have indicated since last

November that time was pressed here. Here we are sitting in the middle of July and still nothing happens.

Mr. ELY. Again, what we were pressed with in the last 7 or 8 months is attempting to make a settlement on substantive issues, not necessarily on the compact. We are faced with this as sort of a new concept. And, again, we would still have to take that back.

I do not know if I can move that timeframe any sooner. Also, I would still have to consider the language and bring it to the council before I can make any kind of binding decision.

Senator LAXALT. I understand that, and I know you are trying to deal in good faith and I hope you feel the members of this subcommittee are as well. It seems to me that if this is generally acceptable to you, perhaps you could take it back to your people, accelerate that turnaround time, and maybe we can get this job done.

Mr. ELY. We will certainly consider that.

Senator LAXALT. Thank you all very kindly. We appreciate your coming in.

Well, we have 10 minutes for the concluding panel, and that consists of Bolton Minister, former compact commission member, and Walter Wilson, councilman from the city of Reno.

Gentlemen, welcome. Who is the director of this panel? Mr. Minister, welcome.

STATEMENT OF A PANEL CONSISTING OF: BOLTON F. MINISTER, FORMER MEMBER, CALIFORNIA-NEVADA INTERSTATE COMPACT COMMISSION, ACCOMPANIED BY LEROY ARRASCADA, COUNSEL, WALKER RIVER IRRIGATION DISTRICT; AND WALT WILSON, VICE PRESIDENT, REGIONAL WATER PLANNING AND ADVISORY BOARD OF WASHOE COUNTY, NV

Mr. MINISTER. Senator, I was listed first, so I guess that I will go first. Mr. Leroy Arrascada, counsel for the Walker River Irrigation District, is with me, and if I have any time left, I will give it to him.

Senator LAXALT. Surely.

Mr. MINISTER. Mr. Chairman, ladies, and gentlemen, my name is Bolton Minister and I am a former member of the California-Nevada Interstate Compact Commission from the Walker River in Nevada.

I have submitted to you written testimony in more detail covering the compact allocation between the States of California and Nevada for the Walker River. Briefly, the allocations provide, first, for recognition and confirmation of the existing Federal court decree filed in 1936, a decree that adjudicated water rights for the entire river system in both California and Nevada, including the rights of the Walker River Indian Reservation.

These rights account for 85 to 86 percent of the average annual flow of the Walker River from all available sources.

Second, an allocation to each State in recognition of appropriations of water under Nevada State water law or uses of water under California State water law. These appropriations or uses were those existing in 1964 and originated after the Federal court decree was filed.

Included in this allocation, but not by virtue of an appropriation of water under Nevada State law, is 13,000 acre feet per year for storage in the Webber Reservoir and use on the Walker River Indian Reservation.

Similarly, 9,450 acre feet of direct diversion water for use on the Walker River Indian Reservation is included in this allocation. The total of these water allocations account for 8 to 10 percent of the average annual flow of the Walker River from all sources.

You may be interested to know that in determining the allocations for storage and direct diversion on the Walker River Indian Reservation, those persons who represented Nevada in negotiations sought and received active participation and involvement in the negotiations of Mr. George Hedden, Mr. J.W. Chamberlain, and Mr. James Long, all Bureau of Indian Affairs representatives legally representing and with obligation to represent the Walker River Indian Tribe. Tribal representative Mr. Walter Voorhees was also present.

Third, the balance of the waters of the Walker River were defined as "unused water," and allocated 35 percent to California, 65 percent to Nevada. This water amounts to only about 5 percent of the average annual flow of the Walker River.

To make this water available on a dependable basis would require large storage facilities. In some years, large flow rates are available for short periods, but in 3 of 10 years there is no flow of unused water.

Engineering studies indicate a total conservation yield from these flows of 12,000 to 16,000 acre-feet, or from 4,200 to a maximum of 5,600 acre-feet of water in a year on a dependable basis to California, and 7,800 to 10,400 acre-feet of water a year on a dependable basis to Nevada.

Now, I want to emphasize that the compact deals with the relationship of the two States. This compact does not grant rights to private parties or entities, nor does it take existing rights away from private parties or entities.

This compact allocates waters between the States of California and Nevada. The water rights of individuals or entities are satisfied from the allocation of water to California or Nevada and are perfected by either a court adjudication, by following applicable State water law, or by claim of Federal right, which claim is then subject to Federal court interpretation.

Senator LAXALT. Do you see any way in which the Walker River Tribe would be prejudiced by the adoption of this compact in respect to their water rights?

Mr. MINISTER. They would be prejudiced as far as the allocation to California of the unused water.

Senator LAXALT. And that is true of the other river systems as well?

Mr. MINISTER. That would be true of the other river systems, too, and I concur with all that Mr. Kennedy had to say in relation to the reliance of California upon the way the compact is drafted. I think it is necessary to California. I think he made a very good statement and I would fully back his statement, and I am on the other side of the State line.

Further, I would point out that the negotiations that resulted in this compact were public, in public meeting rooms, with notice of meetings and agendas mailed to any interested party at least as far in advance of meetings as I had notice of this hearing.

These meetings were attended and participated in by private parties and by governmental agencies; for instance, by Mr. Piper of the Department of the Interior from Menlo Park; by Mr. Hedden of the Bureau of Indian Affairs from Phoenix; Mr. McMasters, counsel to the Federal representative from Salt Lake City; by the Bureau of Sports Fisheries from Portland; and by many others from their staffs and from other agencies.

Senator LAXALT. Tell me this: Did you participate only in the Walker River portion of the compact?

Mr. MINISTER. I participated in the whole compact, Senator. I was chairman of the subcommittee on the Carson River. I participated as a negotiating member of the Walker, and I participated in the overall meetings of the general compact and I attended meetings on the Truckee, but not as a participant.

Senator LAXALT. Over what period of time did these negotiations continue?

Mr. MINISTER. I participated from June or July 1961 until a similar time in 1973, a time during which all of the allocations, as written in the compact, were finalized and drafted, with the possible exception of an agreement or two that were made on the Lake Tahoe allocation before I arrived on the commission.

Senator LAXALT. And the tribes were represented by whom, BIA, at the time?

Mr. MINISTER. The tribes were represented by BIA and, as I say, they were attended at times by their own representatives.

Now, I would like to introduce into the record—and I am going to read to you from the record of the certified reporting of the detailed minutes of the record, and I am going to introduce these, but I would like to read to you because they are relevant to what you are asking.

I am quoting on page 30 of this meeting of Friday, June 4, 1965. This is relative to the Walker River and relative to some of the comments that were made by the panel preceding me.

I say, "Mr. Chairman," and I am talking to Mr. Newell, who is chairman of the joint commission, in a joint commission meeting, "I think we ought to call upon our people who are representing the Walker River Indian rights in the area and ask for their thinking in this whole area of description of the Webber Reservoir storage."

Mr. Piper, the gentleman from Menlo Park representing the Department of the Interior, said:

> Well, Mr. Chairman, representatives of the Department of the Interior discussed this matter at luncheon and I would like to ask Mr. Hedden to speak to the points involved. We are concerned about some of the wording.

Then Mr. Hedden goes on to say:

> Let us take the hundred percent affirmative part of it first. In the second paragraph, we found no reason to take exception or indeed to even raise any question about that part of it. In the first paragraph, we had some of the same confusion that the members of Nevada had regarding the initial part of it.
>
> We have done some redrafting on this part for clarification. We hope acceptance by the joint commission—I am sorry I did not get the chance to get it typewritten.

And this goes on, Mr. Hedden for another page-and-a-half, showing his participation, his involvement in the drafting and the language that is a part of our compact, and representing the Indians—a man with the responsibility to represent them.

Now, this is the meeting of June 4 that I have been talking about. Now, I am going to also introduce into the record the meeting of June 29, again a joint compact commission meeting.

Between what I have read you in this first transcript and the successive meeting of the joint compact, which I am introducing here, the details of the Webber Reservoir allocation—an allocation that was not perfected under any State right or court adjudication; an account that, lacking compact, would have to be a claimed right by the Federal Government and which would have to be adjudicated by a court before it became perfected.

But we on the Nevada side negotiated for the Indians, with their help, and at the end of this negotiation I, again speaking to the chairman, say:

> Mr. Chairman, may I express myself on the record, too, as to my appreciation of the efforts of Mr. Long, Mr. Hedden and Mr. Chamberlain, who came up from Phoenix and attended a meeting of the Walker River Irrigation District.
>
> May I say that these people were most courteous and most knowledgeable, and that they were the first government people I have ever had dealings with that would talk to you across the table, lay the cards on the table, and end up saying yes or no. And I appreciated this and I want to compliment them on the record for it.

Now, this is not only showing their participation here; it is the invitation to any other Government agency to get in here and work with us and to work out the problems, and I think we did work them out in the context of the whole compact negotiation area.

I want these in the record, if I may, Senator.

Senator LAXALT. Both of the reports will be filed with the record.

Mr. MINISTER. Further, I would say the proceedings, the discussions, the findings and the agreements were published in print media and radio in Reno and Sacramento regularly and by occasional television coverage.

Transcripts of the meetings were available from certified court reporters.

Thank you, Mr. Chairman, for the opportunity to testify before you and I stand ready to answer any questions you have to the best of my ability or to assist you in any way. If you have none for me, I would ask Mr. Arrascada to make a remark or two.

[The prepared statement follows:]

PREPARED STATEMENT OF BOLTON F. MINISTER

Gentlemen:

I request favorable and timely action on the subject Bill and in particular Article 8, Walker River Basin, of said Bill.

In support of this request, I seek to aid you in your understanding of the allocations between the State of California and the State of Nevada of the waters of the Walker River.

First, I present my qualifications to be heard on the subject of my request to you. I was appointed a member of the California Nevada Interstate Compact Commission, representing the Walker River Irrigation District by Governor Grant Sawyer, on June 20, 1961, and I continued to serve in an active roll on the Commission until the Fall of 1973, when, by reason of the pending sale of my property in the Walker River Irrigation District, I resigned from the Commission. The whole language in the Bill before you, at it refers to the Walker River, was negotiated, drafted, passed and ratified by both California and Nevada during the period I was a member of the Commission.

Now I will go to your understanding of the allocation of the waters of the Walker River. At the time the negotiations between the States commenced, there was in existence a Federal Court Decree, C-125, which adjudicated the major portion of the waters of the Walker River Stream System in both California and Nevada by years of priority, in specific amounts, to specific uses, and at various locations. Decree C-125 was preceeded by Federal Court Decree 731, which prescribed the regimen for water use through the priority year of 1919 for the area in California and Nevada upstream from the Walker River Indian Reservation, which itself is immediately above Walker Lake, the terminus of the River. Decree 731 was re-opened to adjudicate the rights of the Walker Indian Tribe and Decree C-125 integrated the rights the Court determined applicable to the Walker Indian Reservation with rights previously adjudicated in Decree 731, and further took notice of water rights perfected during the period following the entry of Decree 731 up until Decree C-125 was entered.

With this background, the logical approach to the problem of allocating by Compact the waters between the States was to recognize Decree C-125 and confirm to each State the waters necessary to the fulfillment of the Decree. This is the approach followed in the Walker River Compact with the following exceptions:

The Compact provisions limit, as between the States, the rights of the Walker River Irrigation District under Decree C-125, to store water in Topaz Reservoir on the West Walker River, and Bridgeport Reservoir on the East Walker River that appeared to be repetitive, limiting storage at Topaz Reservoir to 85,000 acre feet per year, and limiting storage at Bridgeport Reservoir to 57,000 acre feet per year.

Agreement was also reached that resulted in the cancellation of Walker River Irrigation District permit applications referred to in C-125 that would allow the storage of more water than 85,000 acre feet in Topaz Reservoir and 57,000 acre feet in Bridgeport Reservoir. Thereby under Compact terms there is a specific limit to the Walker River Irrigation District's storage rights that have been listed in Decree C-125.

Beyond this, it appeared most logical to consider those appropriations of water and uses of water under California State Law (riparian and littoral water right), and such other minor uses in either State as being existing as of 1964, not having been previously recognized in Decree C-125. This approach is the identical approach the Court made in admitting water appropriated between the dates of filing Decree 731 and Decree C-125. An allocation was made to each State in the amount of existing diversions and uses of water.

Note should be taken at this point of Article 3, Section C, which states,

> "The use of water by the United States of America or any of its agencies, instrumentalities or wards, shall be charged as a use by the State in which the use is made."

To fully protect all of the Nevada claims to existing water use, the Nevada members of the Walker River Negotiating Committee actively sought and received the participation, guidance and assistance of those responsible for the Walker River Indian Reservation and with their help the specific recognition and allocation was made by Article 8, Section A4(b) to Nevada for use on the Walker River Indian Reservation as a present use of 13,000 acre feet per year for storage in Webber Reservoir. In addition, the allocation to Nevada for use on the Walker River Indian Reservation of 9,450 acre feet per year of water to be diverted from the natural flow of the river was given a priority of 1933 and is intended to reflect the existing use (as defined in this Bill) and claim needs of the Walker River Indian Reservation. Further, it was provided that these allocations did not require the diversion or storage of water not of suitable quality on the Reservation.

Having recognized Decree C-125, then recognizing existing use subsequent to the date of the Decree, and allocating to the States the water necessary to fulfill these rights, all waters in excess were defined as "unused water" and allocated 35% to the State of California, 65% to the State of Nevada, and provisions were made permitting the developement of this water by storage under specific criteria that resolved long standing disputes between the two States.

To place in perspective the three specific types of allocation in the Walker River Compact, the recognition of Federal Decree C-125 accounts for 85 to 86% of the average annual flow of the Walker River from all available sources using the 53 year period, 1903 to 1955. The allocation to each State in the amount of existing meaning as of 1964, diversions, and including the allocation to Nevada for use on the Walker River Indian Reservation account for 8 to 10% of the average annual flow. And finally, the allocation of "unused water" amounts to only about 5% of the average annual flow of the Walker River Stream System. This unused water would be available from natural flow only a few days - 10 to 15 days in the average year, and would not flow in about 3 of 10 years. To place the unused water to a higher use requires developement by storage facility to firm up an annual yield, and about 8 acre feet of space will be required to provide an annual yield of 1 acre foot. Engineering studies indicate a total conservation yield from the unused water of 12,000 to 16,000 acre feet per year depending upon number and location of storage facilities and their operational criteria.

This Compact deals with the relationship of the two States. This Compact does not grant rights to private parties or entities, nor does it take rights away from private parties or entities. This Compact allocates waters between the States of California and Nevada. The water rights of individuals or entities are satisfied from the allocation of water to California or Nevada, and are perfected by:

1. A Court adjudication, or
2. By following applicable State Water Law, or
3. By claim of Federal right, which claim is subject to Federal Court interpretation.

Article 1 of the California Nevada Interstate Compact states the purposes, the tasks assigned the drafters of this Compact, by the State of California, the State of Nevada and by the United States in legislation authorizing this Compact. This Compact addresses and meets the objectives assigned. I urge your favorable action in consenting to this Compact so that it may become effective and fully operable uniting California and Nevada and the Federal Agencies in cooperation essential to the orderly, integrated, comprehensive, developement, use, conservation and control of the water in the Compact Area.

Thank you Mr. Chairman and gentlemen for the opportunity to testify before you. I stand ready to answer any questions you may have, to the best of my ability, or to assist you in any way that I am able.

Senator LAXALT. Thank you very kindly, Mr. Minister.

Mr. Arrascada, do you have something to offer?

STATEMENT OF LEROY ARRASCADA

Mr. ARRASCADA. Just briefly, Mr. Chairman. I realize that we are getting very, very short on time, so at this point I would offer the written statement in the record of Mr. James Weishaupt, who is here sitting in the front row. He is the U.S. water master on the Walker River.

I think his statement very clearly points out to the Committee the very small quantity of unpredictable water that we are talking about that this compact tries to resolve. I think a lot of the issues that have been brought forth here today are really red herrings dragged across this room.

We negotiated very, very hard. It is a small quantity of water and we think the compact settles that particular issue.

I would also ask that my statement be admitted as part of the record and, with that, I would be willing to answer any questions you may have, Mr. Chairman.

[The following was received for the record:]

PREPARED STATEMENT OF LEROY ARRASCADA

My name is LeRoy Arrascada. I am an Attorney at Law and I represent the Walker River Irrigation District, Yerington, Nevada.

The Walker River Irrigation District is a quasi political subdivision of the State of Nevada, organized and existing pursuant to Nevada Law, Chapter 535 (Irrigation Districts). The Irrigation District was formed in 1919. There are approximately 564 individual ranchers located within the Irrigation District. The boundaries of the District encompasses 246,000 acres of ground.

The Walker River is an unreliable source of water. The Spring run-off only lasts for a period of 17 to 20 days during the months of May or June. Thereafter the water subsides rapidly so that in most years the flow, by the middle of July, is insignificant, without storage facilities to meet the requirements of the land along the River which has been brought under cultivation. Even under normal conditions, that is in the absence of upstream reservoirs, the water would not, in most years, reach the lands of the lower reaches of the Walker River where the Schurz Indian Reservation is located, by the end of July. Seepage and high evaporation loss occurring while the River is in a depleted condition at its source.

The region of the Walker River and its tributaries is arid and incapable of producing crops without artificial irrigation. The River and its tributaries are the only source of water supply for the irrigation of lands. If precipitation is low, averaging less than 10 inches of water, the land without artificial irrigation would be dry and arid and of little value.

During the peak run-off periods in the months of May and June, water may flow in excess of pre-allocations. The Compact provides a means whereby the excess waters can be allocated and distributed between the States of California and Nevada. The Compact removes from litigation any contest between the two States regarding the amount of water which each may be entitled to.

LITIGATION

The Compact is not a bar to litigation between competing water users to insure that each is receiving the water that they are entitled to. The Compact merely provides a framework within which the unallocated waters of the Rivers can be distributed. The excess waters occur only intermittently for a brief period of time. (10 to 18 days). It is an undependable, unreliable quantity of water.

The water rights of the water users on the Walker River in both the State of Nevada and California were originally adjudicated in a suit entitled Pacific Livestock Co. vs. T. B. Rickey, et al, referred to as Decree No. 731. The rights of the Walker River Indian Reservation were not litigated in that case even though the Government was invited to participate on behalf of the Walker Indian Reservation. In 1924 the United States filed a Complaint seeking to appropriate waters for the Walker Indian Reservation. That case was fully litigated and a decision rendered on June 6, 1935, U. S. vs. Walker River Irrigation District, et al. A subsequent appeal followed to the Court of Appeals of the Ninth Circuit, which is set forth in 104 Fed. 334, 1939. The Walker River Decree is referred to as C-125.

Pursuant to the foregoing litigation, the U. S. District Court adopted rules and regulations for the administration and distribution of the waters of the Walker River Stream System. Six Districts were established encompassing specific areas of the stream system. District No. 1. represented the Walker Indian Reservation. The Walker River Indian Reservation is represented by a member of the Tribe that is appointed by the U. S. District Court. The remaining five districts, each have an individual representative, all of whom comprise the U. S. Board of Water Commissioners.

The rules and regulations provide for full decreed rights by discharge through a weir and inflow from the drainage system of the Walker River Irrigation District. A gauging station is located at the end of Mason Valley.

FORMATION OF COMPACT COMMISSION (1955)

In 1955, the Legislature of the State of Nevada authorized the Interstate Compact Commission. The purpose of the commission was to provide for an equitable apportionment of waters between the State of Nevada and the State of California, and to promote interstate comity and further, other governmental cooperation and protection, and enhance existing economies and remove the causes of present and future controversies.

The concerns of the Walker River Paiute Tribe, the Bureau of Indian Affairs, the Department of Interior and Bureau of Reclamation were all solicited and representatives of each of those bodies appeared before and participated in the commission meetings. Attached hereto are the minutes of the Fifty-Second Meeting of the joint California-Nevada Interstate Compact Commission in which George W. Hedden of the Bureau of Indian Affairs addressed the commission concerning the storage of waters in Webber Reservoir and of water diverted directly for use from that reservoir. A copy of the pertinent portions of that meeting are attached. A certified copy of the transcript of the proceeding will be presented.

A subsequent letter was sent to the joint Compact Commission by Mr. Hedden, requesting specific language changes in the Compact. A copy of that letter, dated June 15, 1965, is attached.

The Fifty-Third Meeting of the Compact Commission addressed itself to the specific language changes and the commission expressed their appreciation for the participation by the U. S. Bureau of Indian Affairs through George W. Hedden and J. W. Chamberlain. The Walker River Paiute Tribe was represented at that meeting by Walter Voorhees. The changes that were requested were adopted and incorporated within the Compact.

The Compact presented to Congress is not a document drafted through legislative fiat. It is a document that was formed through 13 years of public meetings and participation by all branches of government. The Walker River Paiute Tribe, the Bureau of Indian Affairs, the Bureau of Reclamation, Bureau of Sport Fishery and Wild Life, the U. S. Forest Service, Department of Interior, the Walker River Paiute Tribe, Walker River Irrigation District, State of California, and the public at large participated. The concerns of those who participated were addressed in the Compact. Even Mr. Hedden, representing the Bureau of Indian Affairs, stated that all changes that were made were satisfactory to him. Transcript copies are attached.

WITHOUT THE COMPACT COSTLY STATE LITIGATION

The Compact settles the question of the apportionment and distribution of that small quantity of water that occurs on an irratic, undependable basis during a 17 to 20 day period in normal water years. Without the Compact this small quantity of water would become the subject of litigation in the Supreme Court of the United States between the State of Nevada and State of California. The Compact settles the division of these waters between the State of California and State of Nevada. It further provides the framework within which the waters would be distributed between the States.

Ratification of the Compact will not prevent any water user from enforcing the terms of the Federal Court Decree under which the Walker River is administered (U. S. vs. Walker River, in equity C-125).

The Walker River Tribe may contend that the Compact will preclude them from seeking a reserved water right on lands that were added to the Reservation in 1936. The fact of the matter is, that the Compact, in all probability, will provide the Tribe with an available water supply superior to that which they might obtain through an interstate water allocation suit.

The enabling legislation under which Congress authorized the Secretary of Interior to reserve certain public domain lands in Nevada for addition to the Walker Indian Tribe is attached. (94 Stat. 1806). The property added to the Reservation reserved solely for a desert grazing operation. The Secretary of Interior in his March 22, 1936, report to the Senate Committee on Indian Affairs, described the lands being reserved and the purpose for reserving them as follows:

> The remainder of the lands, approximately 169,700 acres, most of which are on the East side of the present reservation, and surround [the tribe's] grazing reserve, is desireable as an addition for grazing purposes. The lands are being utilized almost exclusively by the Indians. Their character and location make them almost valuless to any other group. The range value of the land is so low that it takes from 150 to 200 acres per head, per year. Due to the increased interest of the Walker River Indians in the cattle industry, it is found that if the industry is to be developed and expanded further additional permanent grazing lands will be needed. These lands are now being used by the Indians. At the present time the Indians have only approximately 1,400 head of cattle. If they are to maintain their present herds upon a substantial basis and expand and develope their industry to an appreciable degree for their own support, public domain lands which they have been using for years for grazing purposes should be reserved for their use and benefit. (Emphysis added) (copy attached).

The property added to the Reservation, at best, under existing Implied Reservation Doctrine Law, reserved only sufficient water to fulfill the primary purpose for which the lands were added to the Reservation, namely, "a desert grazing operation". The amount of water required for a desert grazing operation is minimal.

The Compact, in Article III, recognizes and confirms substantial additional water allocation for use on the Walker Indian Reservation with a priority date of 1933. These allocations would include 13,000 acre feet per year for storage in Webber Reservoir, and later rediversion and use of an additional 9,450 acre feet per year to be diverted from the natural flow.

The provisions of the Compact are far more beneficial than litigation over a small quantity of unreliable and undependable water that flows for a 17 to 20 day period on normal water years. The Compact is fair and equitable to all concerned and should be ratified.

Minutes of Fifty-Second Meeting (65/3)
Joint California-Nevada Interstate Compact Commission

Held in Riverside Hotel
Reno, Nevada

Friday, June 4, 1965

Commission Members Absent

A. M. Barton, Vice-Chairman
Leland Ray Charlebois
William W. Bliss
Edward M. Peckham

Commission Members Present

Chairman Robert J. Newell, Federal Representative

William F. Bechdolt
Hubert B. Bruns
George E. Kehlet
Henry G. Loehr
Reginald C. Price
George Hennen, Secretary
Fred L. Fletcher
Phil Hiibel
Bolton F. Minister
Sam J. Strieby
John D. Winters

Others Present

J. Stuart McMaster	Counsel for Federal Representative	Salt Lake City
James W. Johnson, Jr.	Counsel for Nevada Compact Commission	Reno
Fred H. Settelmeyer	Adviser to Nevada Compact Commission	Minden
Robert B. Bond	Assistant Secretary, Joint Commission	Sacramento
Roland D. Westergard	Secretary, Nevada Compact Commission	Carson City
Arthur M. Piper	U. S. Department of the Interior	Menlo Park
Russell J. Mays	Counsel, U. S. Forest Service	San Francisco
George W. Hedden	U. S. Bureau of Indian Affairs	Phoenix
James W. Long	U. S. Bureau of Indian Affairs	Stewart
~~Claude Dukes~~	Federal Court Watermaster	Reno
Robert C. Watson	U. S. Bureau of Sport Fisheries and Wildlife	Fallon
N. J. Geering	U. S. Bureau of Reclamation	Carson City
D. W. Sabiston	California State Water Rights Board	Sacramento
Allan Wendroff	California Department of General Services	Sacramento
Kenneth M. Turner	California Department of Water Resources	Sacramento
Howard F. McKissick	Washoe County Commissioner	Reno
H. E. Rowntree	Walker River Irrigation District	Yerington
Larry Masini	Walker River Irrigation District	Yerington
Edward A. Dyer	Truckee-Carson Irrigation District	Fallon
Adolph Moskovitz	Counsel for Placer County Water Agency, Antelope Valley Water District and Mono County	Sacramento
Alvin Landis	Counsel for El Dorado County Water Agency	Sacramento
Robert H. Shriver	Carson Water Company	Carson City
Clark Bigler	Sacramento Bee	Reno
Ann McKee	League of Women Voters	Reno
Alice Book	Certified Shorthand Reporter	Sacramento

Following the reading of this language it was moved by Mr. Minister that the language be adopted as read. The motion was seconded by Mr. Price, voted upon and carried.

D. Article XX, Subsection A4(a)

The Commission was informed that no changes had been made in the language of Subsection A4(a) as it appeared in the draft of January 22, 1965, as subsequently revised on February 9. However, Mr. Johnson had reported at the last meeting that it might be necessary to revise this language to make it conform to any changes which might be made in Subsection A4(b) which the Drafting Committee had been requested to revise.

Mr. Johnson explained that the Drafting Committee had not yet had the opportunity to meet and consider revision of A4(b) but he understood that the Bureau of Indian Affairs had recently submitted information concerning Weber Reservoir rights to the Drafting Committee. However, since no revision had yet been made of A4(b) it was impossible to tell at this time whether any revision would be required in Subsection A4(a).

Mr. Price stated that the California staff had prepared some language relative to this Subsection A4(b) which had not yet been reviewed by the California Commission, but he would propose that this staff language be distributed to members of the Joint Commission so that it could be reviewed during the luncheon period, thus paving the way for possible action on this matter after lunch. Mr. Westergard stated that the Nevada Commission had also drafted some language relative to this subsection which he would like the California members to consider during the lunch hour. All members were then supplied with drafts of language from both the Nevada Commission and the California staff and the luncheon recess was called at 11:50 a.m. The Chairman requested that the meeting be back in session at 1:30 p.m.

The meeting was reconvened at 1:45 p.m. and Subsection A4(b) of Article XX was again taken up for consideration. Mr. Price reported that during the noon hour the California Commission had reviewed the language prepared by its staff and had adopted it as a California Commission proposal so that it now could be considered in that light. Mr. Minister suggested that the people representing the Walker River Indians be asked for their thoughts on this California proposal. Mr. Hedden replied that during the noon hour the representatives of the Bureau of Indian Affairs had proposed certain revisions to the first paragraph of the proposal but found no reason to change the second paragraph.

The language which representatives of the Indian Service were proposing as a revised paragraph one of the California proposal was then read by Mr. Hedden as follows:

> "In addition to rights recognized in Section A1 of this Article, there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use, and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31. The season for diversion of water directly to use shall be from March 1 to October 31 and that a maximum rate of 60 cubic feet per second for the purpose of determining the availability of water to satisfy rights junior to this allocation, or for division between the states as unused water, water which has been stored, or is available for storage under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used; provided, that the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines, prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year."

Mr. Hedden stated that he would like to see the Commission add one additional sentence to this first paragraph which would read: "Provided further that the foregoing shall not apply to the passage of water of inferior quality to that of Article XIV." In answer to a question from Mr. Moskovitz, Mr. Hedden indicated that the purpose of this last proviso was to permit the Indians to bypass water which might be of unusable quality and not be charged for it as though it had been stored.

At this point Mr. Strieby asked Mr. Heddon if the Bureau of Indian Affairs people would be willing to put a figure in the first paragraph to indicate a maximum rate of flow for both the 13,000 acre-feet of reservoir release and the 9,450 acre-feet of direct diversion. Mr. Hedden replied that he and Mr. Long had determined that the 60 foot per second maximum release would apply to the 9,450 acre-feet of direct diversion which would enable sufficient diversions up into July. If the 60 second-foot maximum rate of diversion was applied to the release or rediversion of storage then this maximum rate should be increased to 75 cubic feet per second instead of the 60. Mr. Strieby indicated that this latter figure would be more satisfactory to the Walker River Irrigation District.

In answer to a question from Mr. Moskovitz, Mr. Long indicated that the 75 cubic feet per second rate of diversion being discussed would be the total rate of diversion to the land, part of which is natural flow and part of which is withdrawn from storage. Mr. Moskovitz then asked why it would be necessary even to state anything other than the maximum rate of direct diversion and asked what the function would be of placing a maximum rate of diversion on water released from storage. Mr. [illegible] replied that as he saw it the purpose of placing the maximum rate of diversion on water released from storage as well as direct diversion would be to offer the upstream water users some assurance that in future years the maximum total diversion would not gradually increase.

After a brief discussion of the advisability of placing maximum rate of flow on the combined direct diversion and release from storage a recess was requested and granted. Following the recess, Mr. Price requested the Commission to give further consideration to the proposed additional last sentence in the first paragraph relating to water quality. Following considerable discussion of this language it was finally suggested by Mr. Price that it be made to read as follows:

> "Provided further that the foregoing shall not apply to the passage of water of inferior quality to the extent that such passage may be necessary to assure that the water used on said reservation is of quality suitable for irrigation."

Mr. Price indicated that the California Commission could approve this revised language and Mr. [illegible] stated that it also seemed acceptable to him, but he requested that, before final action was taken on this language he be allowed to take it back to the members of the Walker River Irrigation District Board of Directors for review. Mr. [illegible] suggested that the other points of this subsection still in question should also be clarified to the point where Mr. [illegible] could also discuss those with the Board of Directors.

It was pointed out that the only point still in conflict was the maximum rate of diversion and whether it should apply to only the direct diversion or also the water reregulated from storage. Mr. [illegible] suggested that following the end of the fourth sentence in the first paragraph the following language would be inserted:

> "The maximum total rate of diversion of water reregulated to and from storage in Weber Reservoir and of water diverted directly for use shall be 75 cubic feet per second."

Mr. [illegible] indicated that this new language would be acceptable to him. However, he did raise the question of whether it was the intent of Mr. [illegible] language to also retain the limitation in the previous sentence relating to the maximum rate of 50 cubic feet per second from direct diversion.

Mr. Johnson stated it was his understanding that the 50 cubic feet per second mentioned in the previous sentence would then be included in the 75 cubic feet per second mentioned in Mr. [illegible] insertion. Mr. Price said it was his understanding that the language would retain the 60 cubic feet per second as a maximum diversion rate on natural flow and the 75 cubic feet per second limitation would be with respect to both natural flow and rediversion from storage.

Mr. Redden replied that while he would be willing to accept either the 60 cubic feet per second limitation on direct diversion from flow or the 75 cubic feet per second on a combination of direct diversion and rediversion from storage, he did not want to see the two limitations placed in the language which Mr. Price had indicated. Mr. Moskovitz stated it was his intention in proposing the 75 cubic feet per second limitation that this be an additional allowance for both rediversion from storage and direct diversion within which the 60 cubic feet per second maximum direct diversion rate would still apply.

Mr. Minister stated his feeling that the Commission should agree either to the 60 cubic feet per second maximum diversion rate on direct diversion or the 75 cubic feet per second maximum diversion rate on both direct diversion and rediversion from storage. California members indicated a preference for the single limitation on direct diversion. Mr. Minister then requested that the Assistant Secretary furnish the interested parties with copies of the language which had been revised by representatives of the Bureau of Indian Affairs and also include the two alternatives relating to maximum rates of diversion which had been discussed so that these could be considered prior to the next meeting.

E. Article XX - Section B

The Commission's attention was next directed to the revised language of Section B of Article XX which the Nevada Commission was proposing and which it had made available to the California members. Mr. Minister pointed out that the Nevada Commission was proposing no change in Subsection B1 as it had been discussed and revised at the meeting of the Joint Commission on April 15.

IN REPLY REFER TO:
Economic Development

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

June 15, 1965

Mr. Robert B. Bond
Assistant Secretary
Joint California-Nevada Interstate Compact Commission
P. O. Box 388
Sacramento, California 95802

Dear Mr. Bond:

Receipt is acknowledged of your letter of June 11, 1965, and enclosures relating to language for Subsection AA(b) of Article XX - Walker River Basin. As you will recall there was considerable discussion regarding the language of the California staff proposal of June 2 with proposed modifications by Messrs. Piper, Long and Haddon and further proposals for change on the part of the Commissioners of the two states and even others who were in the audience. According to my best recollection and also according to my notes there are two places where the draft furnished by your letter of June 11 does not reflect the final language which we understood was part of the proceedings.

The first instance occurs in the third sentence to which we would make an addition so that the sentence would read, "The season for diversion of water to storage shall be from November 1 to October 31 of the following year."

The second change is in the last sentence of the first paragraph. The sentence transmitted by your letter of June 11 reads, "Provided further that the foregoing shall not apply to the passage of water of inferior quality to the extent that such passage may be necessary to ensure that the water used on said reservation is a quality suitable for irrigation." This sentence was in the draft as it was originally read following the lunch period but was replaced by a sentence authored by Mr. Piper reading as follows: "Provided further, that the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water quality standards provided by Article XXV."

There is no change in paragraph 2 and I believe that alternates 1 and 2 as stated by you for paragraph 1 are correct in both instances.

Copies of this letter are being sent to Messrs. Rowntree, Long and Piper. I have not endeavored to send copies thereof to the members and advisors of the Joint Commission. Should you feel it necessary so to do, I will appreciate your taking the initiative in the matter.

Currently a meeting has been scheduled by Mr. Rowntree of the Board of Directors of the Walker River Irrigation District and we have been invited to be in attendance for that portion of their meeting for consideration of Article XX, Subsection AA(b). We plan to attend the meeting which is scheduled for June 21.

Sincerely yours,

Sgd. [illegible] Haddon

Acting Area Director

Minutes of Fifty-Third Meeting (65/4)
Joint California-Nevada Interstate Compact Commission

Held in Holiday Hotel
Reno, Nevada

Tuesday, June 29, 1965

Commission Members Present

Chairman Robert J. Newell, Federal Representative

William F. Bechdolt
Hubert B. Bruns
Leland Ray Charlebois
George E. Kehlet
Reginald C. Price

William W. Bliss
George Hennen, Secretary
Fred L. Fletcher
Phil Hiibel
Bolton F. Minister
Edward M. Peckham
Sam J. Strieby
John D. Winters

Commission Members Absent

A. M. Barton, Vice Chairman
Henry G. Loehr

Others Present

J. Stuart McMaster	Counsel for Federal Representative	Salt Lake City
Fred H. Settelmeyer	Adviser to Nevada Commission	Minden
James W. Johnson, Jr.	Counsel for Nevada Commission	Reno
Fred G. Girard	California Deputy Attorney General	Sacramento
Robert B. Bond	Assistant Secretary, Joint Commission	Sacramento
Roland D. Westergard	Secretary, Nevada Commission	Carson City
Arthur M. Piper	U. S. Department of the Interior	Menlo Park
George W. Hedden	U. S. Bureau of Indian Affairs	Phoenix
J. W. Chamberlain	U. S. Bureau of Indian Affairs	Phoenix
Walter Voorhees	Walker River Paiute Tribe	Schurz
Robert C. Watson	U. S. Bureau of Sport Fisheries & Wildlife	Fallon
Claude Dukes	Federal Court Watermaster	Reno
Orville L. Abbott	California Water Commission	Sacramento
Kenneth M. Turner	California Department of Water Resources	Sacramento
David W. Sabiston	California State Water Rights Board	Sacramento
Frank Torkelson	California Department of Finance	Sacramento
Allan Wendroff	California Department of General Services	Sacramento
N. Edward Denton	Mono County District Attorney	Bridgeport
C. B. Kinnison	Washoe County	Reno
H. F. McKissick	Washoe County Commissioner	Reno
Adolph Moskovitz	Counsel for Antelope Valley Water District, Placer County Water Agency, & Mono County	Sacramento
N. E. Rowntree	Walker River Irrigation District	Yerington
Amos Mussarini	Walker River Irrigation District	Yerington
Edward A. Dyer	Truckee-Carson Irrigation District	Fallon
Garry D. Stone	Carson Water Subconservancy District	Gardnerville
Robert S. Leighton	Sierra Pacific Power Company	Reno
Frank O. Spring	Antelope Valley Mutual Water Company	Coleville
Fred H. Dressler	Rancher	Gardnerville
James Sloan	Attorney	Reno
Clark Bigler	Sacramento Bee	Reno
Alice Book	Certified Shorthand Reporter	Sacramento

Notice having been duly given by the Chairman, the members of the Joi California-Nevada Interstate Compact Commission met in the Holiday Hotel, Reno, Nevada, on Tuesday, June 29, 1965. Chairman Newell called the meeting to order at 10:20 a.m. At his request the roll was called and a quorum was reported pre

Approval of Minutes of Prior Meeting

On motion by Mr. Bruns, seconded by Mr. Price and carried, the minute of the regular meeting of June 4, 1965, were approved as presented.

Election of Officers for Fiscal Year 1965-66

It was moved by Mr. Peckham, seconded by Mr. Price and unanimously carried, that the present slate of officers be continued through the forthcomin year.

Article V - Interbasin Transfers of Use

Mr. Johnson explained that the Nevada Commission had requested that t proposed Article of the compact be deleted. It was their feeling that Section of Article VII provided for the same thing which Article V was intended to cov The Nevada Commission has no objection to the use of Lake Tahoe waters in othe basins by exchange but feels that the language of Article V is redundant. He explained however if the California Commission felt that it should be left in

Weber Reservoir Rights - Walker River Basin

Mr. Minister explained that at a recent meeting of members of the River Irrigation District, its Commission representatives and representative the Bureau of Indian Affairs, a draft of such Subsection A4(b) of Article X relating to Weber Reservoir water rights which had been drafted by the Cali Commission staff was reviewed. As a result of this meeting some minor chan in the proposal were made as indicated in the document entitled "California Proposal with changes of 6/2/65 and 6/21/65 of the Walker River Irrigation District Board Meeting." Mr. Minister stated that this language, which had been distributed to the Commission members, incorporates the first of the t alternates which had been discussed at the previous meeting of the Commissi This is the alternate which provides a maximum diversion rate of 60 cfs per second for water diverted directly for use from streamflow.

Mr. Minister pointed out that this draft also included a slight editorial change in lines 6 and 7 in which the phrase "of the following yea was added to the California staff proposal. He continued that the Californ draft referred in the 11th line to water "which has been stored or is avail for storage". The revision which he had presented to the Commission this d struck the phrase "is available for storage" and inserted in its place the "which can be physically stored or diverted to use". This revision was mad a matter of clarification. One other change which had been made at the me of the Irrigation District interests and representatives of the Bureau of Affairs, occurred in the last sentence of the first paragraph. This had be revised to read as follows:

> "Provided, further, that the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water quality standards provided by Article

He explained that this last change had been made to provide that the Commission should have continuing control over the quality of waters which reached Weber Reservoir rather than permit an arbitrary decision of what water was suitable or unsuitable for use from a quality standpoint by those at the lower end of the river system.

Mr. Minister expressed his appreciation to Messrs. Hedden and Chamberlain who traveled from Phoenix to attend the meeting of the Walker River Irrigation District at which this language was discussed. He stated that they were most helpful in working with the District representatives in revising the language of this provision and he wished to compliment them for their help.

In discussing the proposed changes presented by Mr. Minister, Mr. Moskovitz pointed out that Article XIV of the proposed compact covering water quality, covers restrictions on discharge of wastes in one state which would materially and adversely affect the quality of waters in the other state. There is nothing in the language of Article XIV which affects intrastate waters. The discharge of waste in Nevada which could affect the quality of the water of the Walker River for domestic, recreation and agricultural uses or the maintenance and enhancement of fishery resources at a point further on downstream in Nevada below the point where the discharge was made, is not covered by the provisions of Article XIV because it is solely an intrastate matter. California's obligation under Article XIV is to insure that discharges of waste in California will not adversely affect the quality of the water as it passes the state line into Nevada. Mr. Moskovitz continued that the proviso as proposed by Nevada would raise the water quality level above that needed for existing uses and therefore would cause a greater burden on the whole stream system in satisfying the Weber Reservoir right, so that by virtue of this increased burden on the stream system, California would suffer although it would have no control over the deterioration of the quality of the waters between the state line and Weber Reservoir.

Mr. Minister asked Mr. Hedden and Mr. Piper if they would accept an amendment to the language under discussion which would say that the proviso would refer to the passage of such water as may be necessary to maintain the quality of water at a level suitable for irrigation. Mr. Hedden replied that he would have no objection to the change suggested by Mr. Minister, and Mr. Piper indicated that he had no preference over the language as it was originally included in the revised draft or as proposed for change by Mr. Minister. He did point out that he could not agree with Mr. Moskovitz' interpretation of the first sentence of Article XIV that this applies specifically to the maintenance of quality standards at the state line. Mr. Piper indicated it was his belief that Article XIV was general and would apply throughout the three river basins and that the references to discharge of waste waters are merely references to specific situations that might affect the general standards of water quality stated in the first sentence. Following further discussion on this point a short recess was called to permit members to revise the last sentence of the first paragraph of Subsection A4(b). Following the recess, Mr. Minister moved the adoption of language for Subsection A4(b) of Article XX including the just revised last sentence of the first paragraph which he then read into the record in its entirety. The motion was seconded by Mr. Price, voted upon, and carried. This adopted language is attached as Attachment No. 1 and is hereby made a part of these minutes.

Mr. Minister thereupon stated that this action concluded a full resume' of Article XX, that the Commission had acted upon each and every part of Article XX, and he would therefore move the adoption by the Commission of Article XX in its entirety as the transcript records it has been modified from the language presented by the Joint Drafting Committee in the draft of compact dated January 22, 1965.

He explained that it was his desire to have the Commission adopt Article XX at this time because he planned immediately to bring up the matter of the previously discussed resolution concerning the Bureau of Reclamation's proposed feasibility report on the Walker River Project. In this resolution he wanted to bring this project into proper perspective by insuring that the comments and suggestions of all interested parties in both states would be brought to the Bureau of Reclamation's attention at the earliest possible date so that in finalizing its report the Bureau would be fully informed of the views of all interested parties and agencies. He continued that in the proposed resolution which had been prepared by California and discussed earlier, only portions of Article XX had been quoted. It was his belief that all of Article XX should be made a part of the resolution so that the Bureau may know that a completed article on the Walker River had been adopted by the Commission and the Bureau could proceed in its studies with the assurance that there would not be a series of numerous revisions to the compact language which might affect its project feasibility studies.

Mr. Minister then moved the adoption of Article XX as revised by this Joint Commission through a series of Joint Commission meetings and as attested by the transcript of these meetings. The motion was seconded by Mr. Fletcher. At this point California requested a caucus to consider the motion and the Chairman declared a luncheon recess would be called to permit both Commissions sufficient time to consider the matter before them. The meeting was thereupon recessed at 12:30 p.m.

Following the luncheon recess the meeting was called back to order at 1:50 p.m., and with the consent of the second, Mr. Minister withdrew the motion he had made immediately preceding the noon hour. Referring to the draft of compact dated January 22, 1965, as revised, and specifically to page 59 of that draft, Mr. Minister then moved that the language of the sentence starting on line 9 of the page and the subsequent sentences in that subsection be changed to read as follows:

> "Consequently if such a joint project has not been authorized prior to June 30, 1968, or if an authorized project is rejected by either or both states under applicable approval procedures of state law, either state may develop its share of the unused water of the West Walker River allocated by Section B1 of this Article by surface storage separately and at sites other than upstream from Antelope Valley. Should the commission or the joint commission which negotiated this compact decide that it is in the best interest of each of the two states, it may extend such period for such additional period or periods as seem reasonable, or it may reduce such period as may seem reasonable."

Mr. Minister's motion was seconded by Mr. Charlebois, voted upon and carried.

Mr. Minister then returned to the motion which he had earlier withdrawn and again moved the adoption of Article XX as modified by action of the Joint Commission as attested to by the transcript of the meetings of the Joint Commission in which this action was taken. This motion was seconded by Mr. Price, voted upon and carried.

Proposed Resolution Re: USBR Feasibility Report on Walker River Project

Mr. Minister referred to a proposed resolution dated April 9, 1965, revised on April 15, 1965, which had been presented to the Joint Commission by California interests which requested that the proposed report of the Bureau of Reclamation on its Walker River Project be completed at the earliest date possible and further that the Congress of the United States be urged to enact legislation authorizing construction of this project and to appropriate funds for preproject planning in order that construction may be initiated prior to June 30, 1968. He suggested that this resolution be revised to provide that (a) one whereas would recognize the submittal of the proposed feasibility report by the Bureau of Reclamation, (b) a second whereas would state that it is the duty of the compact commission to attempt to apportion waters equitably between the two states, (c) a third whereas would acknowledge the fact that the Joint Commission in 1956 by resolution requested the Bureau to investigate the feasibility of various developments on the West Walker River, (d) a fourth whereas would quote in its entirety Article XX as just adopted by the Joint Commission. The resolution would then resolve that the interested parties in each state, including the Walker River Irrigation District, the Walker River Indian interests, the County of Mono, Antelope Valley Mutual Water Users Association, and others who have a legitimate interest in the joint project, would be placed on notice that it would be incumbent upon those interests to make known to the Bureau of Reclamation the interest they would have served and the benefits that they would obtain from a joint project and request their cooperation with the Bureau of Reclamation to that end.

The resolution would also resolve that the Bureau of Reclamation should consolidate the stated interests and benefits of all of those commenting on the report into a final feasibility report at the earliest possible date, giving due consideration to the provisions of Article XX of the proposed compact adopted by the Joint Commission this date, and would further resolve that the report as finalized by the Regional Office of the Bureau of Reclamation be duly processed by the federal agencies to permit its earliest possible submission to Congress and to permit the authorization of Congress by enabling legislation for such project. Further, the resolution would memorialize the Senators and Congressmen of the two states and the Regional Director of the Bureau of Reclamation to aid and assist and abet this project. Mr. Minister then repeated that he was moving adoption of this approach to the preparation of a resolution concerning the Bureau of Reclamation's Walker River Project and requesting that the Drafting Committee prepare a draft of such resolution in conformance with the approach which he had just outlined. The motion was seconded by Mr. Charlebois.

Mr. Price raised the question of how much time should be allowed to those interested parties and agencies to forward their comments and expressions of interest to the Bureau of Reclamation. Discussion of this point indicated that a period of 45 days seemed reasonable and it was agreed that the date of August 15 should be inserted in the resolution as the date by which all comments should be submitted to the Bureau of Reclamation. At this point Mr. Minister withdrew his original motion for preparation of a draft of the resolution, and moved that the resolution to be prepared by the Drafting Committee in conformance with the approach which he had outlined be adopted and that this resolution be presented at the next meeting of the Commission for the information of the members. Acceptance of this amended motion was indicated by the second, whereupon it was voted upon and carried. Mr. Girard commented that the Assistant Secretary had just been directed by this approved motion to send the resolution out without further review once he had received it.

Amendment to Article V - Interbasin Transfers of Use (Cont'd)

Referring to the request which had been made to the Drafting Committee earlier in the meeting, Mr. Johnson read the ensuing language which had been prepared to cover the problem of the Lake Tahoe Basin with respect to interbasin transfers of water.

> "Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River waterhsed, or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article XVII of this compact, including but not limited to those provisions concerned with lake levels and water quality."

Mr. Johnson further explained that this was intended to be an appendage to the existing article. It was then moved by Mr. Price that this language be approved for addition to Article V. The motion was seconded by Mr. Fletcher and opened for comment.

Calendar No. 1829

74th Congress } SENATE { Report
2d Session } { No. 1750

WALKER RIVER INDIAN RESERVATION, NEV., ADDITION OF CERTAIN PUBLIC DOMAIN

February 24 (calendar day, Apr. 7), 1936.—Ordered to be printed

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Mr. Thomas of Oklahoma, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 3805]

The Committee on Indian Affairs, to whom was referred the bill (S. 3805) to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation, in the State of Nevada, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 1, line 7, just after the word "township" insert "11".

On page 2, line 1, after the word "hereof" change the period to a colon and insert the following:

Provided further, That the Secretary of the Interior shall arrange, either by the maintenance of existing stock driveways or otherwise, to permit stock owned by others than Indians to cross the reservation at designated points.

On page 2, after line 7 insert a new section as follows:

Sec. 2. Title to all minerals in said lands is hereby reserved to the United States and shall be subject to all forms of mineral entry or claim under the public land mining laws: *Provided*, That the Paiute Indians of the Walker River Reservation shall be paid by mineral claimants for the loss of any improvements on any lands located or withdrawn for mining purposes under rules and regulations to be prescribed by the Secretary of the Interior; *And provided further*, That an annual rental of not less than five cents per acre shall be paid to the superintendent of the reservation to be deposited to the credit of the tribe as compensation for loss of use or occupancy of any lands withdrawn for mining purposes or mineral entry. No mineral patent shall be granted to any applicant who is delinquent in the payment of rental or in the payment of any damages due the tribe under the provisions of this Act.

The proposed amendments to this bill were suggested by Senator McCarran, author of the bill, and the Commissioner of Indian Affairs joins in recommending the said amendments for approval.

The Secretary of the Interior in his report on this bill, under date of March 26, 1936, recommends favorable consideration, and states that the Acting Director of the Bureau of the Budget advises that there is no objection to the presentation of the said report to this committee.

The Secretary of the Interior's report on the bill is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, March 26, 1936.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request of February 26 for report on S. 3805, a bill to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation.

The bill authorizes the Secretary of the Interior to set aside not to exceed 171,200 acres of public-domain land in Townships 12, 13, 14, and 15 North, Ranges 27, 28, 29, 30, and 31 East, Mount Diablo meridian, Nev., as an addition to the Walker River Indian Reservation. The proposed addition embraces vacant public-domain lands adjacent to the present Walker River Reservation. A considerable portion of these lands were formerly Indian owned, but were included in an area relinquished by them under the act of May 27, 1902 (32 Stat. 260). The lands involved are located and described approximately as follows:

On the west side of the reservation—

All of secs. 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, and W½ W½ sec. 24, W½ W½ sec. 25, T. 12 N., R. 28 E.

N½ and SE¼ sec. 1, E½ sec. 24, sec. 25, and the unsurveyed lands which will become SE¼ sec. 23, SW¼ sec. 24, NE¼ sec. 26, and the E½ sec. 36, T. 13 N., R. 27 E. All of secs. 6, 17, 19, 20, 28, 29, 30, 32, 33, and E½ sec. 7, W½ sec. 8, E½, E½, SW¼, and lots 3 and 4, sec. 18, W½ sec. 21, sec. 31, T. 13 N., R. 28 E.

The unallotted portions of lots 1, 2, 3, 4, and S½ N½ sec. 5, T. 14 N., R. 27 E.

All of secs. 30 and 31, T. 14 N., R. 28 E.

On the east side of the reservation—

Beginning at the W¼ corner of sec. 24, T. 15 N., R. 27 E.; thence north ½ mile, thence east 1 mile; thence north 1 mile; thence east 6 miles; thence south 2 miles; thence east 12 miles; thence south 1 mile; thence east 2 miles; thence south 1 mile more or less to the present boundary of the reservation as surveyed and marked by Emergency Conservation Work Engineer, M. A. Hall; thence east to a point 2 miles east of the northeast corner of the reservation; thence south to where this line intersects with the projection of the south line of township 13 N., R. 29 and 30 E.; thence east along this projected line to the range line on the west side of R. 32 E., as now outlined; thence south to a point formed by the intersection of this range line and the projection of the south boundary of the present reservation as surveyed and marked by M. A. Hall; thence west along this projection, the south line of the reservation, and a western projection of this line to a point ½ mile east of the northeast corner of sec. 1, T. 11 N., R. 29 E.; thence southerly along this line to a point ½ mile east of the southeast corner of sec. 25, T. 11 N., R. 29 E.; thence westward to the southeast corner of said section; thence westward along the south boundary of secs. 25 and 26, T. 11 N., R. 29 E., to the shore line of Walker Lake; thence north to the intersection of the Lake Shore and the present reservation line; thence northward and westward along the reservation line to the place of beginning; excluding those lands already included in the reservation.

Part of the land, as above described, is located in township 11 north, range 29 east, which township has been omitted from the bill. It is recommended that the bill be amended by inserting "11," just after the word "townships" in line 7, page 1.

Under the act of June 21, 1906 (34 Stat. 358), certain tracts of timber land on the reservation were withheld from disposition to meet the reasonable requirements of the Indians for fuel and improvements, before opening their surplus lands to public entry as authorized by the act of May 27, 1902, supra. Additional lands have been found necessary to meet the present requirements of the Indians for a wood supply. This accounts for a small tract of 1,440 acres of woodland formerly Indian owned, being included in the present proposed withdrawal.

The remainder of the lands, approximately 169,700 acres, most of which are on the east side of the present reservation and surround their grazing reserve, is desirable as an addition for grazing purposes. The lands are being utilized almost exclusively by Indians. Their character and location makes them almost valueless to any other group. The range value of the land is so low that it takes from 150 to 200 acres per head per year. Due to the increased interest of the Walker River Indians in the cattle industry, it is found that, if the industry is to be developed and expanded further, additional permanent grazing lands will be needed. These lands are now being used by the Indians. At the present time the Indians have only approximately 1,400 head of cattle. If they are to maintain their present herds upon a substantial basis and expand and develop their industry to any appreciable degree for their own support, the public domain lands which they have been using for years for grazing purposes should be reserved for their use and benefit.

Although the lands in question have been and are being used by the Indians practically to the exclusion of all others, part of this area has been utilized to a limited extent by non-Indians for stock-driveway purposes. When making a definite selection of lands to comprise the reserve, this fact will be given appropriate attention and such stock driveways maintained as may be found necessary, or other arrangements made to permit non-Indian stock to cross the land at points to be agreed upon. As all of the public-domain lands in question were temporarily withdrawn from disposition by Executive order of November 26, 1934, for classification, etc., under the Taylor Grazing Act of June 28, 1934 (ch. 865, 48 Stat. 1269), it is necessary that this withdrawal order be revoked insofar as it applies to such of these lands as may ultimately be selected for addition to the Indian reservation. Valid existing rights are not to be affected, and the proposed withdrawal will not interfere with the administration of grazing on adjacent public-domain lands under the Taylor Grazing Act, as the users of existing driveways adjacent to the reserve are to be granted permission to cross the lands, as mentioned above.

In view of the foregoing, I recommend that S. 3805, with the amendment suggested, receive favorable consideration.

Under date of March 20, the Acting Director of the Bureau of the Budget advised that "there would be no objection by this office to the presentation of this report to the committee."

Sincerely yours,

Harold L. Ickes,
Secretary of the Interior.

PREPARED STATEMENT OF JIM WEISHAUPT

My testimony will be brief. I will present material relative to the Walker River System and from the experience that I have gained as U. S. Federal District Court appointed Water Master for the Walker River in California and Nevada. It has been my duty for the last seven years to apportion and distribute the waters of the Walker River, its forks and tributaries in the State of Nevada and in the State of California including the waters for storage and stored water, pursuant to the provisions of the Federal Operating Decree C-125. As a matter of background, I served prior to that time as Chief Deputy Water Master for the court on the Truckee River for four years and as Water Master for the Truckee-Carson Irrigation District on the Truckee and Carson River systems for a period of six years.

Allow me to describe why it is my belief that the California-Nevada Interstate Compact should be ratified and how it would serve to provide a just and equitable means of apportioning the so-called "unappropriated" waters of the Walker River and most significantly, serve as an administrative tool in the distribution of these waters.

The waters of the Walker River flow in a pattern much like that of a roller coaster - they are erratic, unpredictable and undependable. The watershed is abrupt, rising from 6,000 to 12,000 feet above sea level at its greatest width of less than ten miles. Spring thaws or melt-out may only last for seventeen to twenty days in a normal water year. It is during this period only, that the water may flow in excess of the decreed allocations, and it is this water that the Compact would resolve entitlements to. This is a critical point to keep in mind: the water that is being discussed here today is water that is not a viable supply for a given number of days that would allow for crops to be grown, for municipal or industrial use or for recreational use unless storage was provided along with the allocations. The flood waters, or Compact water, does not flow for a long enough period of time to allow for these uses. For this reason, new water right allocations cannot be issued for this water and it can only be used to supplement existing rights. The Compact would allow for the proper distribution of this water between states. Without this additional source of water, the rights that exist on the river today could not divert their total entitlement allowed by the decree. There are more water rights on the system than there is available water. I stress once again, that the total amount of water for any given year is not the same as that which is available for agricultural purposes due to the lack of storage, and flows past the points of diversion.

As this relates to the Compact, to administer these erratic unpredictable, and undependable quantities of water, I, as Water Master do not have any problems establishing the amount of water to be diverted into the ditch systems so long as the quantity of water is the natural flow is within the range of the operating decree.

The amount of available water can be predetermined for the following day and respective priorities to the water established. It is when the natural flow of the river is greater than that of the decree and the rights of the reservoirs have been satisfied that the administration of the stream system begins to deteriorate. The court has issued instructions to me to prorate the excess waters of the Walker River to all users in proportion to the rights already established. To determine who gets how much in either state becomes guess work at best.

Each state has its own water codes or statutes. These state water laws have differing definitions of storage, of the amount that can be stored, and lengths of time this water can be stored. The State of California allows these storage practices to impair the stream system so long as it may be done within a thirty day period. Both states have a system for dealing with applications to change the points of diversion, place of use and manner of use. California recognizes the riparian doctrine, Nevada, the appropriation doctrine. One specific issue that would be resolved by the Compact would be the question, "Are there dormant riparian rights on this or either decreed river?" To complicate matters, the California Water Resources Control Board does not have jurisdiction to any pre - 1914 water rights.

Ladies and gentlemen of the subcommittee, I feel that a system of allocating the water to the users in either state must be put into effect immediately. Identification of the flows either in terms of quantities and locations of the diversions must be provided for by the Compact Administration without ambiguity, duplication or confusion.

Help us on the Walker River avoid the complex and costly litigation experienced by our sister rivers of the Truckee and Carson. We urge you to pass Senate Bill No. ________.

Senator LAXALT. Thank you very much, Mr. Arrascada.

Mr. Wilson.

STATEMENT OF WALTER WILSON

Mr. WILSON. Thank you, Senator Laxalt and committee members. I am Walter Wilson. I am a member of the Regional Water Planning and Advisory Board of Washoe County, which is made up of representatives of the city of Reno, the city of Sparks, and Washoe County.

I am also anxious to have the formal statements of the city of Sparks, the city of Reno, and the water board on the record.

Senator LAXALT. They will be so filed, Mr. Wilson.

Mr. WILSON. I have a very brief summary statement that I would like to read.

The compact is an essential mechanism for the planning and management of existing and future water use in the Lake Tahoe, Truckee, Carson, and Walker River basins of California and Nevada.

Only with congressional consent, however, can the compact become operative. Therefore, as an elected official of the Reno council and as a member and vice president of the Reno, Sparks, and Washoe County Water Board, I present their endorsement and urge this honorable U.S. subcommittee to recommend to the Congress the consent and passage of Senate bill, S. 2457, which will make the compact operational.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF WALT WILSON

Mr. Chairman and members of the Committee, my name is Walt Wilson, Vice-President of the Regional Water Planning and Advisory Board of Washoe County. It is with great pleasure that I appear before you today to voice the support and commitment of the Regional Water Board for S.2457.

The Regional Water Board was created by the Nevada State Legislature to plan for the management and development of water resources in the rapid growth area of Reno, Sparks and Washoe County. The planning effort in progress places significant emphasis on prudent utilization of natural resources, with a balance between resource development and environmental maintenance. Planning for water supply in the context of this balance is merely conjecture without knowledge of the limitation of the water resource. S.2457 provides the mechanism for formalizing the equitable distribution of water between California and Nevada. It thus represents the keystone needed for water resources planning in Nevada.

In seeking solutions to domestic and municipal water supply problems, the Regional Water Board has adopted a perspective which recognizes and respects the interests of all other entities in western Nevada, including the Pyramid Lake Paiute Tribe, Carson City and the Truckee-Carson Irrigation District. In the spirit of the Interstate Compact, the Regional Water Board is pursuing resource development programs that represent a common ground of mutual benefit among the various western Nevada water users, based on Nevada's allocations of interstate water as identified in S.2457.

The Regional Water Board wishes to sincerely thank Senator Laxalt and the other members of the Nevada delegation for their unfailing commitment to obtain congressional ratification of the Interstate Compact. Water resources secured for Nevada by the Interstate Compact represent a trust pledged to preserving and enhancing human, fish and wildlife requirements in western Nevada.

STATEMENT OF
James L. Spoo
Mayor, City of Sparks
Sparks, Nevada
On S. 2457
July 15, 1986

As Mayor of the City of Sparks, it is a privilege to submit for the record my comments in support of S.2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact.

The Truckee River is a resource essential to the economic vitality of the City of Sparks. In a broader context, the river is an indispensible asset to all human activity in western Nevada. It additionally provides a key component of habitat required by the fish, wildlife, and water-fowl which utilize the region.

The bill provides federal recognition of an agreement between California and Nevada that is based upon an equitable allotment of water between the two states. The City of Sparks considers the provisions of the Compact to be fair to Nevada water users, and without which their well being would be at accute risk. In a spirit of cooperation and progress, the City of Sparks will continue to work with the Pyramid Lake Paiute Tribe and other water using entities to identify areas of mutual benefit, believing that differences must be resolved on issues of water quality as well as water quantity.

The City of Sparks commends Senator Laxalt for his efforts to secure congressional ratification of the California-Nevada Compact. The Compact secures for future generations of Nevadans the water resources necessary to maintain the quality of life for which western Nevada has become known.

STATEMENT OF
Jim King
Chairman, Washoe County Commission
Washoe County, Nevada
on S.2457
July 15, 1986

As chairman of the Washoe County Commission, it is a pleasure to submit for the record this statement on behalf of Washoe County, Nevada, in support of S.2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact.

The urbanized area of Washoe County, which encompasses the municipal jurisdictions of Reno and Sparks, resides in the rain shadow of the Sierra Nevada Mountains. This area experiences only limited local precipitation. Available water supplies consist of the Truckee River, small tributary streams, and minor developable ground water basins. Because it rises in the productive watersheds of the Sierra Nevada Mountains, the Truckee River is the single-most important resource not only to the county, but also to the entire western region of Nevada. Upon its flow, a significant portion of Nevada's people, economy, and fish and wildlife rely. The prosperity of Washoe County and the quality of life experienced by its citizens are immeasurably tied to the Truckee River.

Ratification of the Interstate Compact is needed to formally resolve the host of problems and conflicts which potentially stem from California and Nevada's use of a common water resource. Critical interstate issues are addressed by the Compact, which apportions water between the two states in a manner perceived by Washoe County to be fair to all affected parties.

Nevada's entitlement of Truckee River water will serve to benefit the various uses that exist in western Nevada. In addition to urban requirements, these include agricultural needs, fishery requirements, and wildlife habitat maintenance uses. Optimization of water management and development opportunities within Nevada for the benefit of urban, rural, Indian, and non-Indian interests is a goal to which the county subscribes.

Washoe County would like to thank the Senators and Representatives of the Nevada delegation for their steadfast resolve in seeking congressional approval of the Interstate Compact. There is no doubt that the success of this effort will contribute greatly to the future welfare of all citizens in western Nevada.

STATEMENT OF
Peter J. Sferrazza
Mayor, City of Reno
Reno, Nevada
On S.2457
July 15, 1986

On behalf of the City of Reno, I urge Congressional support for S.2457, ratification of the California-Nevada Interstate Compact. Water in an arid region such as western Nevada represents the single most important aspect of life. It is a measure not only of the quality of human existence, it also contributes to the requirements of the fish, birds, and animals which rely on water resources tributary to the area.

The economic vitality of Reno is dependent upon an assured supply of water from the Truckee River. Land-use decisions promulgated by the city have committed water resources from the Truckee River, based upon the equitable apportionment presently recognized by the states of California and Nevada. Approval of the Interstate Compact by Congress will formalize this agreement, thus ensuring the continued availability of Truckee River water for existing and future beneficial uses within Nevada.

The City of Reno regards the interstate allocation of water to be fair to the interests of all Nevadans, including the Pyramid Lake Paiute Tribe. The City of Reno and the Tribe share many common goals, including that of ultimate recovery of the Lahontan cutthroat trout and cui-ui. With the ratified Compact in place, the City of Reno will continue to explore with the Tribe areas where Nevada's entitlement to Truckee River water can be managed and developed in a manner which complements the interests of both parties.

The City of Reno would like to extend its appreciation to Senator Laxalt and Senator Hecht, as well as Representatives Reid and Vucanovich, for their foresight and diligence in seeking congressional approval of the Interstate Compact. This effort represents a commitment to the long-term economic, social and environmental well-being of western Nevada.

Senator LAXALT. Thank you very much, Mr. Wilson.

I want to congratulate the members of the panel and everybody else for the expeditious manner in which this testimony has been presented. We have covered a lot of ground here in the last couple of hours.

We will make your statements and this testimony available to all the members of the subcommittee. As was obvious here, with the exception of Senator DeConcini, the other members of this panel are unfamiliar with Nevada waters and with this particular problem. We will attempt to educate them in the next several days.

As I also indicated to some of the members of the panels, we have some written questions that will be submitted to you and we would appreciate your answering those as quickly as they are submitted, and I will have Mr. Abbott from my staff coordinate that with you.

It may well be, after reviewing the various answers and statements, that some of the answers are already in the record. If so, you may be relieved of that.

If there is nothing more, we will stand adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

APPENDIX

Office of the
Churchill County Commissioners
Fallon, Nevada 89406

July 2, 1986

The Honorable Orrin G. Hatch
United States Senate
Room 135
Russell Senate Office Building
Washington D. C. 20510

Dear Senator Hatch:

The Churchill County Board of Commissioners is extremely concerned about the pending passage of the California/Nevada Interstate Compact, (SB 2457). We understand this matter will be brought before the Senate Judiciary Subcommittee on the Constitution July 15, 1986.

Churchill County, lying in the west central section of Nevada, is a recipient of irrigation waters originating in the Sierra Nevada Range in California. As such, our agricultural, economic and general well being are highly dependent on the equitable adjudication of waters flowing across the California/Nevada state line.

We therefore urge you, as a member of the Senate Judiciary Subcommittee on the Constitution, to recommend passage of SB 2457.

Sincerely,

Melba Alldredge

MELBA ALLDREDGE, Chairman
Churchill County Commissioners

John J Hanifan
JOHN HANIFAN, Member
Churchill County Commissioners

Aldo Benedetti
ALDO BENEDETTI, Member
Churchill County Commissioners

MA:ba

CARSON CITY, NEVADA
CONSOLIDATED MUNICIPALITY AND STATE CAPITAL

July 7, 1986

The Honorable Orrin G. Hatch, Chairman
Subcommittee on the Constitution
135 Senate Russell Office Building
Washington, D.C. 20510-4402

Dear Senator Hatch:

The Board of Supervisors of Carson City, the Capital of the State of Nevada, welcome and appreciate this opportunity to express support for S.2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact.

It is the position of the Board of Supervisors, as the elected representatives of the people of Carson City, that the issue of an interstate allocation of the water supplies of the Carson, Truckee and Walker Rivers and Lake Tahoe must be finalized and concluded.

The rural area of Carson City borders a significant stretch of the Lake Tahoe shoreline. We are, therefore, extremely concerned about allocations and use of water in the Lake Tahoe Basin.

The City and our people are dependent for a portion of our water supply from the Carson River. Uses of water supplies of that river outside of the City area also have direct implications and affects on our City. Because of the inter-relationship between the Carson and Truckee Rivers, we are also extremely concerned about a fair and equitable allocation to the State of Nevada on the Truckee River stream system. We view water supplies and management in this western Nevada area as a regional concern and, therefore, are also interested in interstate divisions of water supplies on the Walker River stream system. The Marlette water system and tributaries to the Carson River are also an integral part of Carson City's water supply.

It is, therefore, absolutely imperative to citizens of our community to know, not only for the present, but for future planning, the specific quantities of water that will be available for use within each state.

CARSON CITY, NEVADA
CONSOLIDATED MUNICIPALITY AND STATE CAPITAL

An example of continuing concern about uses of water supplies of the Carson River, is an action taken by the 1985 Nevada State Legislature. That body created a Committee to Study the Carson River Basin and to evaluate information concerning the hydrology of the Carson River and its tributaries and the feasibility of constructing reservoirs to be used for multiple purposes. The State Legislature appropriated funds for this study to be matched by local and private sources. The City of Carson City as well as other counties within the Carson River drainage area, have committed funds for the study. In addition, the Carson City Chamber of Commerce has made a commitment to provide matching funds.

Western Nevada and Eastern California are areas of short, limited water supplies with increasing competition for use of those supplies by various interests. This increased competition can only result in additional conflict and controversy unless and until specific action is taken to resolve potential interstate conflicts. Enactment of S.2457 would serve that purpose.

The Board of Supervisors of Carson City respectfully urges favorable action by your Committee and subsequent enactment of the legislation by the United States Congress.

Thank you for the opportunity to submit this testimony.

Sincerely,

Wm. Burnaugh

William Burnaugh
Mayor Pro Tem
Carson City Board of Supervisors

cc: Nevada Congressional Delegation

Washoe Tribe of Nevada and California

Highway 395 South, Gardnerville, Nevada 89410
702 / 265-4191   702 / 883-1446   702 / 885-5595

WASHOE TRIBAL COUNCIL MEMBERS

Chairman
ROBERT L. FRANK
(Reno-Sparks)

Vice-Chairman
BRIAN WALLACE
(Off-Reservation)

BEVERLY J. FRANK
(Woodfords)

JIM FRANK
(Carson Colony)

CARL JAMES
(Carson Colony)

KENNETH JAMES
(Dresslerville)

RAYMOND PAYNE
(Woodfords)

ROMAINE SMOKEY, JR.
(Dresslerville)

VERNON WYATT
(Off-Reservation)

Secretary-Treasurer
A. JO ANN NEVERS
(Appointed)

Mail Address
RT. 2, Box 68
GARDNERVILLE, NEVADA 89410

7 July 1986

Honorable Orrin Hatch, Chairman
Subcommittee on the Constitution
United States Senate
212 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Hatch,

I respectfully request that you insert in the hearing record on S. 2457, regarding the California-Nevada Interstate Compact, the enclosed testimony of the Washoe Tribe of Nevada and California.

This testimony was prepared for hearings on S. 1558, regarding the Pyramid Lake Paiute Tribe. Our testimony on S. 1558 addressed our concerns with the California-Nevada Interstate Compact and is therefore pertinent to S. 2457.

It is the position of the Washoe Tribe that the Compact, and the operations of the Commission, would adversely impact the water rights of five Indian tribes located along three river basins in Nevada. Our specific concerns are with the vague and broad powers of the Interstate Commission to regulate water rights or uses on Indian lands.

These concerns are reinforced by a memorandum dated January 14, 1969 from Secretary of Interior Stewart Udall to Bureau of the Budget Director Charles Zwick regarding the Department of Interior position against ratification of the Compact (enclosed). Department of Interior concerns are further documented in a November 7, 1984 memorandum from the Bureau of Indian Affairs to the Regional Solicitor (enclosed).

I have met and discussed the Washoe Tribe's concerns regarding the Compact with Mr. Roland Westergaard, the Nevada State Engineer. I have also met with Governor Richard Bryan to discuss this matter. We have received no response to our written memorandum of concerns presented to Mr. Westergaard. Furthermore, the State Engineer has consistently rejected any recommendations to resolve Indian water concerns.

In our testimony on S. 1558, we offered constructive recommendations to prevent any negative impacts of the Compact or the Compact Commission on Indian water interests. We requested that the intent of Congress be clarified to prevent the Compact Commission from attempting to exercise jurisdiction over Indian water rights.

The water rights concerns of the Washoe Tribe are not addressed or protected on S. 2457. Therefore, the Washoe Tribe recommends that Congress not ratify the California-Nevada Interstate Compact.

I respectfully request that this letter, the Washoe Tribe testimony on S. 1558, the enclosed Department of Interior documents, and the Washoe Tribe memorandum to Mr. Westergaard be inserted into the permanent hearing record on S. 2457.

Sincerely,

Robert L. Frank

Robert L. Frank, Chairman
Washoe Tribe of Nevada and California

TESTIMONY
of
THE WASHOE TRIBE OF NEVADA AND CALIFORNIA
on
THE PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

I. INTRODUCTION

My name is A. Brian Wallace. I am the Vice-Chairman of the Washoe Tribe of Nevada and California.

The Washoe Tribe of Nevada and California supports the efforts of the Pyramid Lake Paiute Tribe to resolve the many difficulties it has faced over the years in trying to maintain a fair and reasonable access to water to which the tribe has a legal and historical right.

However, the Washoe Tribe is strongly opposed to the California-Nevada Interstate Compact, contained in Section 201 of the bill. We have consistently opposed this Compact for many years. The Compact in its present form has been opposed by the Department of Interior, acting in its capacity as trustee for the Indian tribes, since at least 1969. We do not believe that the concerns of the Department, as they affect the Washoe Tribe, have changed.

After providing specific comments on our concerns with the Compact, we wish to offer recommendations for resolving those concerns. We hope that these recommendations will be carefully considered by this Committee.

II. SPECIFIC CONCERNS WITH THE COMPACT

Our concern with the provisions discussed below is that intent with respect to jurisdiction on Indian lands is unclear. We believe that the intent of Congress with respect to jurisdiction over Indian lands should clearly indicate that such jurisdiction is reserved by the federal government.

Article IV

We object to the creation of the California-Nevada Compact Commission. The Commission will represent the interests of the two states, but will be empowered to make decisions that may impact on the water rights of the five tribes in the three river basins.

According to officials of the State of Nevada, the interests of the tribes will be represented on the Commission by the Nevada State Engineer (page 28). This arrangement will result in neither objective representation nor effective advocacy for the rights and interests of the Washoe Tribe.

The federal representative will be a powerless, nonvoting, ex-officio member of the Commission (page 27). Even if objections to negative impacts on Indian tribes' water rights were raised by the federal representative, that representative would be powerless to influence the decisions of the Commission.

The Washoe Tribe does not wish to be represented on the Commission. It is in the best interests of the tribal government to remain separate and apart from an instrument of the two state governments.

Paragraph 6 of Article IV.D. provides the Commission with the power to require water users to install and maintain water measuring devices (page 33). The intent of Congress should be clarified to indicate that this provision does not apply on Indian lands.

Article IV.D. paragraph 9 permits the Commission the right of access to all properties in the four river basins (page 34). We believe that Congress should clarify that this provision does not apply to Indian lands.

Article IV.D. paragraph 11 provides the Commission with subpeona powers that are greater than that of federal district courts (page 34). We realize that the intent of the drafters of the Compact was to enable the Commission to subpeona federal officials in Washington, DC. Congress should clarify this provision to ensure that the Commission does not attempt to serve subpoenas on Indian lands, or against tribal elected officials, employees, members or representatives.

The specific problems discussed above are exacerbated by the vague and broad powers provided by the Compact to the Commission in paragraph 4 (page 33) and paragraph 10 (page 34) of Article IV.

We are especially concerned about the "emergency" powers provided in Article IV.E. (page 35). The term "emergency" is not defined, and the specific actions of the Commission seem to have no procedures for accountability to the public. Congress should clarify its intent that the existence of an emergency does not provide the Commission with the power to alter the allocations of water provided to the Washoe Tribe under the Alpine Decree, or to change the terms of the Decree.

Article X

Article X provides for Interbasin Transfers of Use (page 61). The exchange of water, provided for in line 9 should be clarified to specify that all exchanges of Carson River water should be consistent with the Alpine Decree.

Article XVIII

The Washoe Tribe should be exempted from the definition of "persons" on line 2 of page 64. The Washoe Tribe should not be subject to the jurisdiction of the Commission, which is an instrument of the state governments.

Article XX

We are particularly concerned about the "Recourse to Courts" article (page 67). If the occasion arises that the Washoe Tribe needs to seek judicial relief in federal courts, the Tribe should not be required to first submit its concerns to the Commission for review. Congress should clarify this article to specify that the water rights of the Washoe Tribe do not come under the jurisdiction of the Commission, but remain under the jurisdiction of the federal district court according to the provisions of the Alpine Decree.

Article XXI

Article XXI on page 68 contains the disclaimer that nothing in the Compact shall be construed as:

> A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

That disclaimer is directly contradicted by paragraph 7 of Article XXII on page 85, which makes specific provisions of the Compact binding on the federal government.

Article XXII

Congress should clarify the meaning of the term "person" in line 7 of page 85. The definition of "person" should not include Indian tribes, Indian people or individual Indians.

Article VII

Article XXII makes all of Article VII, "Carson River Basin," binding on the federal government (pages 42-47). The Washoe Tribe believes that the allocations of water are clearly established in the Alpine Decree. We oppose any efforts or interests to change those allocations without our consent.

The limitations on uses of water as contained in Article VII.A. on page 43 should not apply to the Washoe Tribe. The language in that paragraph envisions ditch irrigation. The Washoe Tribe uses a pumping system. The Alpine Decree recognizes individual pumps.

The words "under applicable state law" on line 8 of page 44 should instead read "under the applicable court decree."

Article VII.B. discusses "additional claims" of Carson River water (page 45). The Alpine Decree, on page 1, under Findings of Fact, states that the waters of the Carson River and its tributaries are fully appropriated. The intent of Congress should be clarified to define "additional claims," and to resolve differences between the Compact and applicable court decrees.

III. CONCERNS WITH TITLE I

The Washoe Tribe supports the initiative taken by the Pyramid Lake Tribe to resolve many difficult water disputes with other water users in the Truckee River Basin. However, we do have several concerns with Title I as they affect the Washoe Tribe (page 33).

Section 110

The funding provided for in Section 110 of the bill should be appropriated separately by Congress for this purpose. The sums of $7 million per year should not be taken out of Bureau of Indian Affairs funds appropriated for other purposes.

Section 111

Section 111 of cancels all repayment obligations of the Truckee-Carson Irrigation District (TCID) owed to the United States government. According to the Carson City District Office of the Bureau of Reclamation, the irrigation district owes the taxpayers at least $1,493,000 and perhaps more. The exact figure should be specified in the bill.

Perhaps in this time of fiscal austerity, Congress should seriously consider whether the federal government can afford to forego this revenue. The savings to the TCID from having the pending lawsuits dropped should enable it to fully repay this obligation.

IV. ENVIRONMENTAL CONCERNS

The Compact was enacted by the legislatures of California and Nevada prior to the enactment by the federal government of major environmental policies. We are concerned that the Compact does not address federal policies regarding water quality or endangered species.

V. WASHOE TRIBE RECOMMENDATIONS

The Washoe Tribe does not wish to obstruct the important and historical resolution of serious water issues on the Truckee River. While we were aware that negotiation between the Pyramid Lake Paiute Tribe and other parties would probably result in proposed legislation, we were surprised to see the Compact attached to the bill.

While the Washoe Tribe believes that the Compact should be removed from the bill, we do not want to jeopardize the agreements arrived at after extensive and difficult negotiations. Instead, we wish to offer constructive recommendations that will mitigate the most potentially harmful impacts of the Compact on the water rights and interests of the Washoe Tribe.

Clarification of Congressional Intent

We recommend that a Section 204 be added to Title II of the bill to read:

> Notwithstanding any other provision of this Title, the federal government hereby reserves jurisdiction for, and on behalf of, the Washoe Tribe of Nevada and California with respect to all water rights, all water claims, and all allocations of water as decreed in *United States v. Alpine Land & Reservoir Co.*, Civ. No. D-183 BRT (D. Nev.), as trustee for the Washoe Tribe of Nevada and California.

This will protect the rights of the Washoe Tribe without requiring a change in the content of the Compact itself, which is contained wholly within Section 201. This amendment will also protect the status of the federal government as trustee for the lands and natural resources of the Washoe Tribe.

Committee Report Language

We further recommend that language be included in the Reports of the Senate Committee on Indian Affairs and the House of Representatives Committee on Interior Affairs to clarify the intent of Congress that Articles IV, XVIII and XX do not empower the Commission to exercise jurisdiction on Indian lands. Language should be included to clarify that the Alpine Decree establishes the allocations of water for the Washoe Tribe, and that no action of the Commission shall in any way change those allocations or affect the Washoe Tribe's use of those allocated waters, without the express consent of the tribal governing body.

A. Brian Wallace, Vice-Chairman
WASHOE TRIBE OF NEVADA AND CALIFORNIA
919 Highway 395 South
Gardnerville, NV 89410

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Dear Mr. Zwick: JAN 14 1969

This responds to your request for the views of this Department on the draft California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake. We believe, however, that a revised compact, acceptable to the United States, California and Nevada, can be negotiated and we recommend that the Federal Government now propose such negotiations.

As noted in a letter of August 1, 1968, to Mr. R. Hiter, Federal Representative on the Compact Commission, from the Chairman of the California Commission and the Chairman of the Nevada Commission, the United States owns or controls virtually all the storage and diversion facilities on the Truckee and Carson Rivers and at Lake Tahoe. The rights of the United States on the Truckee River include the right to store water in Lake Tahoe between certain levels (described in the discussion of article V below) and the right to irrigation water for the Newlands project. On the Carson River the rights of the United States effectively preempt the flow of the river as of [illegible]. The United States supports the Winters' doctrine claim of the Pyramid Lake Tribe to Truckee River waters.

The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation.

Our position with regard to the Indian water rights is predicated upon the principles enunciated in Winters v. United States, 207 U.S. 564 (1908), and in Arizona v. California, 373 U.S. 546 (1963). We consider that all waters from Lake Tahoe and the Truckee River system other than waters (1) appropriated by the United States for such other purposes as the Newlands project or (2) adjudicated to third parties in litigation to which the United States was a party, as in United States v. Orr Water Ditch Co., et al, Nev. Equity No. A-3, D.C. Nev., September 8, 1944, are reserved for present and future development of the Pyramid Lake Indian Reservation.

From the viewpoint of regional and national interest, the recreational development now underway in the Lake Tahoe area should be continued as the draft compact contemplates, to the extent this can be accomplished without imperiling Pyramid Lake. The maximum 50,000 acre-feet set aside by the draft compact for diversion upstream of the California state line for California use in the Upper Truckee River and for Lake Tahoe uses in both states should not prove a substantial loss to Pyramid Lake. About a third of the 50,000 acre-feet represents already existing uses which would almost certainly be recognized in any Winters' doctrine suit. Some substantial part of the diversions will be returned to the river, presumably after treatment in accordance with applicable water quality standards. Even the complete loss of 50,000 acre-feet would leave an average annual flow into Nevada of 450,000 acre-feet and would also leave available for Pyramid Lake the periodic great flows. There is also an advantage to Pyramid Lake in the setting of a ceiling on the Lake Tahoe and Upper Truckee uses.

Preliminary findings of studies regarding Pyramid Lake which we are conducting are as follows. First, Pyramid Lake is a recreation resource of national significance because of its large area and the recreation, sport fishing, aesthetic, geologic, ecologic, archeologic and historic values it provides. Second, the lake offers greater potential high quality water recreation for large numbers of users than any other lake in Northern Nevada or California, particularly in light of the unique opportunity for optimum recreation development afforded by the Pyramid Lake Indian Tribe's single ownership of the lake and most of its environs. Third, we believe that the recreation potential of the lake is imperiled gravely by the current decline in level due to upstream diversions and uses and prospectively by further decreased inflow if new upstream facilities on the Truckee River should be developed to hold back and divert for other purposes the heavy spring runoffs which the lake now receives. Therefore, we propose negotiation of a revised compact which, together with a resolution of the other difficulties discussed herein, contains a recognition of the right of the United States to proceed with the Winters' doctrine litigation and the corresponding duty of all parties to be bound by the results of that litigation.

We hope to conclude in the near future studies which will show more clearly the relationship of Lake Tahoe and Upper Truckee River uses to maintenance of the level of Pyramid Lake. Even if the studies compel a modification of our position, we believe that negotiation of an acceptable compromise may be possible.

A brief description of the substantive provisions of the compact and their effect upon United States and Indian rights follows. A majority of the indicated problems could be resolved through negotiation.

Article I expresses the compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin.

Article III contains general language with regard to "Sovereign Relationships."

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area and the fact that the United States would be bound by the key provisions of the compact, the Federal representative should be a voting member of the Commission. In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of *United States v. Truckee Carson General Electric Company*, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

The major provision of article V permits total annual gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Part of the 34,000 acre-feet is already being used within the basin.

Article VI of the compact allocates water of the Truckee River in the following order of relative priority as between the states. First, to Nevada the amounts provided for in the decree of *United States v. Orr Ditch Company* for irrigation on the Pyramid Lake Indian Reservation. Second, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee River exceeds the so-called Floristan rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act. After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the *Orr Ditch* decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water Pyramid Lake development would have to precede the future development in California.

This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its *Winters'* doctrine claim for Truckee River water.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork to irrigate an additional 5600 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahonton Reservoir but subject to other existing uses within Nevada. Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahonton in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of *United States v. Alpine Land Company*, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from the Truckee River for the Newlands project and so adversely affect Pyramid Lake. It is also better that negotiation to settle water rights in the Carson Basin be done within the framework of the *Alpine Land Company* case rather than in the proposed compact. Accordingly, the compact should be revised to accept the decision of the court in the *Alpine Land Company* case.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in decree C-125 in the case of the *United States v. Walker River Irrigation District*, 104 F. 2d 334 (1939). In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, from the report of the case, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in *Arizona v. California*, 373 U.S. 546 (1963), where the court recognized the Indian right to water for all irrigable acreage within the reservation whether irrigated presently or not. Thus, under the *Walker River* decree, the Indian reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of *Arizona v. California* had been applied. We are, therefore, considering the possibility of reopening the *Walker River* case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results.

Articles IX through XX deal with such other subjects as development of ground water and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the compact for further state procedures leading to a water right. Article XXI purports to protect the rights of the United States. Paragraphs A through D, article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, article XXII, Ratification and Consent, an exception for which is contained in article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the compact, the United States would be bound to still other provisions.

Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it. We are concerned, therefore, that the exception from impairment of rights and powers of the United States under article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

We realize that the compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. A less ambitious but worthwhile and attainable goal would be a revised compact which constitutes a framework for recognition of existing uses but is flexible enough to accommodate future resolution of remaining conflicting claims. We propose that the Federal Government oppose the compact as it stands, but that it enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies with a program interest in the area subject to the compact.

We suggest that the work of negotiation be made the responsibility of a special task force on which this Department, as well as the Department of Justice, should be represented. We would like to be consulted on the naming of the negotiators. We also would like an opportunity to participate in the drafting of instructions to the negotiators.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

November 7, 1984

Phoenix Area Director

California-Nevada Interstate Compact, our Meeting of June 14, 1984

Regional Solicitor

At our Phoenix meeting on Thursday, June 14, 1984, you indicated that the files you inherited regarding the California-Nevada Interstate Compact were travel worn and incomplete. You requested that this office provide a listing of concerns relative to the proposed compact.

For approximately twenty years representatives from the states of California and Nevada negotiated the language of an interstate water compact with token United States representation and no Indian input. After the draft compact passed the Nevada Assembly and Senate and was introduced in the California legislature, many federal agencies, the Solicitor's Office and Bureau of Indian Affairs included, devoted considerable time and expense in developing a federal position on the proposed compact. The official federal (including the Department of Interior) position taken as the result of that effort was one of rejection; that the compact was unacceptable in its present form. Neither the overall federal position nor that of the Department of Interior has never been rescinded - over a fifteen year period with four changes in administration and seven different men serving as Secretary of Interior.

The constancy of that position is extremely important since many major events have occurred in the intervening years that impact on Lake Tahoe and the Truckee, Carson and Walker River basins. For example:

- *Endangered Species Act enacted by Congress 12/28/73, P.L. 93-205.
- *Supreme Court decision in Nevada v. United States.
- *Final Decree in United States v. Alpine Land and Reservoir Company.
- *Ninth Circuit Court of Appeals decision in Carson-Truckee Water Conservancy District v. Secretary of Interior.
- *Unprecedented population growth in the Lake Tahoe and Reno-Sparks areas.

Through the years this office has consistently raised concerns about the compact in its present form and how it would adversely affect Indian people. Events that have transpired in the recent past such as those enumerated above have not allayed our concerns; in fact, we are now more concerned than ever.

Some of the major problems we have with the presently drafted compact are:

- The compact allocates water amounts in both California and Nevada that is not consistent with the final decree in United States v. Alpine Land and Reservoir Company.
- The compact is extremely detrimental to Pyramid Lake.
- Area fishery problems are not addressed in the compact.
- There is no consideration given in the compact to water quality and yet water quality problems exist in each of the three river basins.
- The compact ignores the paramount United States interests in the region.
- The compact does not take into account the Congressional charge regarding treatment of endangered species.

We are aware of the recent negotiation position of the State of Nevada that compact approval in its present form is a necessary prerequisite to a negotiated settlement of the Pyramid Lake issues. In light of the concerns we have enumerated above and those we have attached we see no way that United States officials can acquiesce to such a demand and still fulfill congressionally mandated federal functions.

JAMES H. STEVENS

Washoe Tribe of Nevada and California
Highway 395 South, Gardnerville, Nevada 89410
702/265-4191 702/883-1446 702/885-5595

Mail Address:
RT. 2, Box 68
GARDNERVILLE, NEVADA 89410

TO: Roland Westergard
Karen Baggett

FROM: Robert L. Frank, Chairman RLF

DATE: 9 September 1985

RE: S. 1558

The Washoe Tribe is very concerned about the attachment of the California-Nevada Interstate Compact to the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Listed below are our specific concerns and questions with the Compact. We would appreciate your responses in writing.

Commission

We object to the creation of a Commission that represents the interests of the two states, but which may make decisions detrimental to the water rights of the five tribes located in the four basins. The federal representative will be a powerless, nonvoting ex-officio member of the Commission.

General Powers, Article IV

Paragraph 4 of Article IV.D. provides the Commission with unnecessarily broad and vague powers. Paragraph 10 provides the Commission with the power to "take such action as it deems appropriate for the enforcement of the provisions of this compact."

Paragraph 6 of Article IV.D. provides the Commission with the power to require water users to install and maintain water measuring devices. We are concerned that the Commission may attempt to enforce this provision on Indian lands.

Paragraph 9 of Article IV.D. permits the Commission the right of access to all properties in the four basins. We are concerned that the Commission may attempt trespass on Indian lands.

Paragraph 11 provides the Commission with subpeona powers broader than that of even federal district courts. We are concerned that the Commission may attempt to subpeona tribal officials, members or employees.

We are especially opposed to Article IV.E. which provides the Commission with "emergency" powers. We believe that there is great potential for adverse use of this virtually unlimited power against the water rights of Indian tribes. What constitutes an "emergency"?

Recourse to Courts

This provision, Article XX, should be clarified, so that it does not apply to actions initiated by, or on behalf of, Indian tribes.

Tribal Jurisdiction

Article XXI.A. contains the disclaimer that nothing in the Compact will be construed as:

> A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

That provision is contradicted by Paragraph 3 of Article XXII, which makes specific provisions of the Compact binding on the federal government.

Environmental Concerns

The Compact fails to address water quality concerns and legislation. The Compact also fails to address concerns with the Endangered Species Act.

Nevada Legislature

July 11, 1986

The Honorable Orrin G. Hatch, Chairman
Subcommittee on the Constitution
135 Senate Russell Office Building
Washington, D.C. 20510-4402

Dear Chairman Hatch:

As a Nevada assemblyman who represents a significant portion of the lands subject to the California-Nevada Interstate Compact, and as chairman of the Assembly Committee on Natural Resources, I appreciate the opportunity to express my support for the compact's ratification.

The California-Nevada Interstate Compact is a major document of importance to my constituents. The concepts contained in the compact required 16 years of continual effort for development. The time invested in literally hundreds of meetings and hearings represents millions of dollars worth of activity.

The compact has been passed by both the California Legislature and the Nevada Legislature. Both governors, representing the populace of the two states, have signed the document. The states have been attempting to abide by its terms for many years, even though it has not been ratified as the official "law-of-the-land."

Not having the compact ratified has affected a tremendous amount of planning and activity in Western Nevada. So far, we have been able to avoid destructive, costly lawsuits between the states and their respective residents. As more pressures are brought upon our water resources, however, we must have the stability of the ratified compact if we hope to avoid these types of negative, costly conflicts.

I, therefore, respectfully urge your support of the California-Nevada Interstate Compact, and I appreciate the time and energy you are investing in this most significant matter.

Sincerely,

Virgil Getto

Virgil M. Getto
Nevada State Assemblyman

VMG/llp:L36

CARSON
CITY
CHAMBER of
COMMERCE

[illegible] SOUTH CARSON STREET · CARSON CITY, NEVADA [illegible] · TELEPHONE [illegible]

July 11, 1986

Hon. Orrin G. Hatch, Chairman
Subcommittee on the Constitution
135 Senate Russell Office Bldg.
Washington, D.C. 20510-[illegible]

Dear Senator Hatch:

The Carson City Chamber of Commerce thanks you for the opportunity to make known our position and express our support for Senate Bill [illegible], a bill to grant the consent of Congress to the California-Nevada Interstate Compact.

Carson City has the good fortune to have both the Carson River and Lake Tahoe within its incorporated boundaries and, therefore, is vitally interested in the California-Nevada Interstate Compact and the issue of water allocation for the Carson River, the Truckee River, and the Walker River, as well as Lake Tahoe. The issue of water rights allocation in the arid west has for too long been placed upon the shelf and its early resolution is now a matter of the utmost importance.

Carson City is the center of government for the entire State of Nevada, has a great dependence upon the water from all of the water sources which are the subject of the Senate Bill [illegible]. The municipal water system of Carson City is dependent upon the water supply of the Carson River and our city also borders a significant stretch of the Lake Tahoe shoreline. Additionally, the use of water from the Carson River and Lake Tahoe by our sister communities has direct implications and effects on our community. Due to the interrelationship between the Carson River and the Truckee River, through the Newlands project and the Lahontan Reservoir, we are extremely concerned about the equitable allocation to the State of adverse effect on the Carson River system.

We have viewed and continue to view water supply and management of water in the western Nevada area as one of regional concern and one which must recognize the interstate nature of the [illegible] water system and tributaries to the Carson River are an integral part of the Carson City water supply for its citizens and the governmental activities within Carson City.

..... continued

To acquire a more definitive future in the area of planning growth and expansion, which is so critical in the western United States, we feel it is imperative for Congress to approve Senate Bill [illegible] to allow not only Carson City, but other communities and entities that are dependent upon these water supplies for their very existence. This concern has taken the form of an action by the Nevada State Legislature in 19[illegible] creating a committee to study the Carson River Basin and to obtain the information regarding with the hydrology of the Carson River as well as its utilization. Another concern of our community is the continued need for the construction of upstream reservoirs to serve a variety of needs along the river of agricultural, recreational and municipal natures.

The increasing competition for water supplies can only result in the continued conflict and controversy amongst those competing users until specific action is taken to deal with the allocation of water resources on a regional basis and to establish a body for the equitable allocation and administration of these water supplies. It is our belief that Senate Bill [illegible] delivers an ability to begin the process of an equitable and fair allocation.

In light of the foregoing, it is respectfully the position of the Carson City Chamber of Commerce that your Subcommittee take favorable action and that subsequently you advocate the passage by the United States Congress of this vital piece of legislation.

Respectfully submitted,

[illegible]
President
Carson City Chamber of Commerce

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

RESOLUTION OF THE BOARD OF SUPERVISORS,)
COUNTY OF ALPINE, STATE OF CALIFORNIA,)
URGING CONGRESS OF THE UNITED STATES TO) RESOLUTION 86- 84
RATIFY THE CALIFORNIA-NEVADA INTERSTATE)
COMPACT CONCERNING WATERS OF LAKE TAHOE)
CARSON RIVER AND WALKER RIVER BASINS.)

WHEREAS, W. Coburn Cook then District Attorney of Alpine County, with the support of the Board of Supervisors, in 1951 or 1952 suggested that the states of California and Nevada establish a Compact Commission for the purpose of settling long standing water deiputes betwen the two states over use of water of the Carson River, and

WHEREAS, such a Compact Commission was established by the two State Legislatures and the Congress of the United States which also included the Walker and the Turckee Rivers and Lake Tahoe, each being an interstate body, and

WHEREAS, the Compact was completed in 1968 and ratified by the two State Legislatures, California in 1970 and Nevada in 1971, and

WHEREAS, the Compact did satisfy in general the objectives of Coburn Cook and the Board of Supervisors of Alpine County, and

WHEREAS, the Compact is now before the Congress of the Unites State for ratification,

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Alpine urge the Congress of the United States to ratify the joint Compact Agreement at the earliest possible date.

PASSED AND ADOPTED by the Board of Supervisors, County of Alpine, State of California, on July 1, 1986, by the following polled vote:

AYES: Supervisors Freeman, Bennett, Jung, Gansberg and Chairwoman Sawdey

NOES:

ABSENT:

Elinor Sawdey
Elinor Sawdey, Chairwoman
Board of Supervisors, County
of Alpine, State of California

ATTEST:

Karen Keebaugh
Karen Keebaugh, County Clerk
and ex-officio Clerk of the
Board

APPROVED AS TO FORM:

Henry C. Murdock, County Counsel

THE FOREGOING INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE.
ATTEST JUL 6 1986 19 ___
COUNTY CLERK
County of Alpine, State of California
By K. Keebaugh Clerk

EDAWN
ECONOMIC DEVELOPMENT AUTHORITY OF WESTERN NEVADA
Reno International Airport / P.O. Box 11710 / Reno, Nevada 89510 / Telephone 702/322-4004

July 9, 1986

The Honorable Chic Hecht
Senator, State of Nevada
302 Hart Building, Suite 14
Washington, D.C. 20510

Dear Senator Hecht:

Enclosed is a resolution endorsing the California-Nevada Interstate Compact, and most particularly, U. S. Senate bill S2457, which provides the consent of Congress to that compact.

As the public/private organization dedicated to the economic development and diversification of the Reno/Sparks area, and Washoe County, the Economic Development Authority of Western Nevada is vitally concerned that the California-Nevada Interstate Compact Commission be adopted by Congress. Water is, and will continue to be, the most precious commodity in western Nevada. The apportionment of water resources will dictate the future economic growth and vitality of our area.

The enclosed Resolution indicates our concerns and hopes.

Sincerely,

James A. Thornton

James A. Thornton
President

JAT/dp

RESOLUTION

WHEREAS, The California-Nevada Interstate Commission was created in 1956 to divide the waters of Lake Tahoe, the Truckee River, the Carson River, the Walker River and their tributaries: and

WHEREAS, The purpose of the Joint State Compact was to provide for the equitable apportionment of water between the two states: to promote interstate comity: to further intergovernmental cooperation: to protect and enhance existing economies: to remove causes of present and future controversies: to permit the orderly integrated and comprehensive development, use conservation and control of the waters within the Lake Tahoe, Truckee River, Carson River and Walker River Basins: and

WHEREAS, The negotiations were concluded and agreed upon by the California-Nevada Interstate Compact Commission and a representative of the United States Government in 1969: and

WHEREAS, The States of California and Nevada through their respective Legislatures approved the Interstate Compact in 1971: and

WHEREAS, On May 12, 1986, Nevada's Senators Laxalt and Hecht introduced into the United States Senate, S2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact: and

WHEREAS, It is of utmost importance to the sovereign State of Nevada, and of utmost importance to the people of Nevada, and of utmost importance to each community within the areas involved: now, therefore, be it

RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF WESTERN NEVADA, A public-private organization, chartered to assist in diversifying and developing the economy of western Nevada, urges the United States Congress to formally ratify S2457 thereby adopting the California-Nevada Interstate Compact.

James A. Thornton, President

Subscribed and Sworn

to before me this 8th day

of July, 1986

Rose M Munson

Notary Public

ROSE M. MUNSON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES AUG 20 1986

GREENHEAD HUNTING CLUB, INC.
P. O. BOX 58
FALLON, NEVADA 89406

SENATOR CHIC HECHT
WASHINGTON, D.C.
1986 JUL 21 AM 11:23

July 11, 1986

U. S. Senator Chic Hecht
302 Hart Bldg. Suite #14
Washington, D. C. 20510

Dear Senator Hecht:

Reference is made to S.2457 as introduced by Senator Paul Laxalt to grant the consent of Congress to the California-Nevada Interstate Compact.

The undersigned, on behalf of the 486 members of the Greenhead Hunting Club, Inc., Fallon, Nevada, hereby endorse the passage of the above referenced legislation and encourage your support in the passage of the California-Nevada Interstate Compact.

Very truly yours,

GREENHEAD HUNTING CLUB, INC.

George W Lott

George W. Lott
President

GWL/mc

NORTHERN NEVADA DEVELOPMENT AUTHORITY
POST OFFICE BOX 140 CARSON CITY, NEVADA 89702 (702) 883-4413

SENATOR CHIC HECHT
WASHINGTON, D.C.
1986 JUL 15 PM 2 33

July 10, 1986

Executive Director
Gary Cook

President
Bill Mathis

Vice President
Bob Anderson

Secretary
Barbara Cook

Treasurer
Mike Grim

Executive Committee
Board of Directors
Julius Bunkowski
Phil Carter
Kris Lewis
John Hancock
Bill Huss
Sandy Sandefer
Shawn Smyth
Mike Stoddard
Bill Tomerlin

Ex-Officio Board
Charlie Osburn
Story County
Tom Fettic
Carson City
Tom Grady
Lyon County

Senator Chic Hecht
302 Hart Senate Office Bldg.
Washington, DC 20410

Dear Senator Hecht,

The Northern Nevada Development Authority is a state recognized development authority whose activities include business retention and new business development.

During FY 1985, which ended June 30, 1986, we were able to create 459 jobs in our four county service area of Carson City, Douglas, Storey and Lyon counties, Nevada. Expanding businesses in the same area have accounted for 110 new jobs.

The Board of Directors of N.N.D.A. has unanimously voted to support the passage of Senate Bill 2457, granting the consent of Congress to the California Nevada Interstate Compact. We feel that this is a positive and important piece of legislation which will add to our economic diversification and development efforts.

Sincerely,

Gary M. Cook

Gary M. Cook
Executive Director

GMC:vdl
cc John D. Winter
Ophi• Mill Ranch, Dayton, Nevada

Board of Mineral County Commissioners

P.O. BOX 1450
HAWTHORNE, NEVADA 89415
(702)945-2446

Allen E. Conelly
~~[illegible]~~, Chairman
Robert C. Lybarger
~~[illegible]~~, Vice Chairman
Donald M. Anderson
~~[illegible]~~, Member

Governing Board for the Towns of
Hawthorne, Luning and Mina
LIQUOR BOARD
GAMING BOARD

July 10th., 1986

Chairman,
U.S. Senate Judiciary Committee
Washington, D.C. 20510

Dear Sir:

Enclosed herewith please find a copy of comments of Mineral County, Nevada on S.B. 1558 and H.R. 3213 prepared on September 27, 1985 and submitted at initial hearings held in Washington, D.C. regarding legislation on the so-called Nevada-California Interstate Water Compact.

It would be deeply appreciated if you would include these comments as part of the testimony record of any and all the panel and committee hearings to be held regarding S.B. 1558 and H.R. 3213 on July 15, 1986 or on any subsequent date.

The Board of Mineral County, Nevada Commissioners strongly urges disapproval of the compact and recommends that it be returned to both parties of the agreement and that it be required to be reopened in both states for more current and comprehensive testimony with all interested parties involved in order that a more equitable and fair adjudication of the waters could accrue. Mineral County points out that while it encompasses a part of the Walker River System and the entire whole of Walker Lake, the terminal section of the Walker River it as a most vitally interested party, was denied participation by the Nevada Legislature in initial development of the compact.

This apparent deliberate exclusion of Mineral County in compact hearings constitutes an outrage and represents "legislation without representation." Such calculated oversight can only be corrected by Senate rejection of the compact as currently drafted or Senate stipulation that a minimum portion of the Walker River flow (the past 10 year average) be guaranteed to go into Walker Lake to insure its preservation as a naturally created desert/mountain lake.

Thanking you in advance for your kindness in this matter, I am.

Respectfully yours;

BOARD OF MINERAL COUNTY COMMISSIONERS

Allen E. Conelly

ALLEN E. CONELLY, CHAIRMAN

AEC/bt

NOTE: Comments of Mineral Count, Nevada on S. 1558 and H.R. 3213 are retained in the subcommittee files.

Board of Mineral County Commissioners

P.O. BOX ~~[illegible]~~ 1450
HAWTHORNE, NEVADA 89415
(702)945-2446

ALLEN E. CONELLY
~~[illegible]~~, Chairman
ROBERT C. CYBARGER
~~[illegible]~~, Vice Chairman
DONALD M. ANDERSON
~~ALLEN E. CONELLY~~, Member

Governing Board for the Towns of
Hawthorne, Luning and Mina

LIQUOR BOARD

GAMING BOARD

July 10th., 1986

CHAIRMAN,
U.S. SENATE JUDICIARY COMMITTEE
WASHINGTON, D.C.

PLEASE REPLACE SENATE BILL 1558 WITH SENATE BILL 2457
~~RE: SENATE BILL 1558 AND H.R. 3213.~~

MINERAL COUNTY NEVADA, AN OFFICIAL ENTITY OF NEVADA GOVERNMENT VIGOROUSLY URGES YOUR COMMITTEE AND THE SENATE AS A WHOLE TO OPPOSE AND DEFEAT PASSAGE OF THE SO-CALLED NEVADA-CALIFORNIA INTERSTATE WATER COMPACT INVOLVING THE WALKER, TRUCKEE AND CARSON RIVER SYSTEMS. IT IS BELIEVED APPROVAL OF THE COMPACT WILL RESULT IN DISASTROUS AND IRREPARABLE INJURY AND HARM TO MEMBERS OF THE PYRAMID LAKE AND WALKER RIVER INDIAN TRIBES AS WELL AS TO RESIDENTS OF MINERAL COUNTY AND CENTRAL NEVADA. MINERAL COUNTY ALSO STRONGLY PROTESTS REPORTED DENIAL OF RIGHT OF WALKER RIVER TRIBAL REPRESENTATIVES TO TESTIFY AT JULY 15 HEARINGS ON SAID BILLS. MINERAL COUNTY BOARD TAKES POSITION THAT THE MOST CHARITABLE THING TO BE SAID ABOUT THE SO-CALLED COMPACT IS THAT IT CONSTITUTES A RIP-OFF IN FAVOR OF SPECIAL INTEREST GROUPS AND SHOULD BE KILLED IN COMMITTEE. COMMENTS OF MINERAL COUNTY RE. S.B. 1558 AND H.R. 3213 WILL BE FORWARDED BY POSTAL EXPRESS LETTER FOR INCLUSION IN YOUR TESTIMONY RECORD.

BOARD OF MINERAL COUNTY COMMISSIONERS

Allen E. Conelly
ALLEN E. CONELLY, CHAIRMAN

SIERRA
CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

SIERRA CLUB TESTIMONY REGARDING S. 2457

THE NEVADA/CALIFORNIA INTERSTATE WATER COMPACT

TESTIMONY PREPARED FOR THE SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE CONSTITUTION

JULY 14, 1986

The Sierra Club opposes passage of S. 2457. The Sierra Club reaffirms its longstanding policy of opposition to the Nevada/California Interstate Water Compact for the following reasons:

1. The Compact is outdated in that it was passed by the two states in 1970 and 1971 and has never been reexamined in light of important environmental protection legislation, including the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act. If approved as proposed, key provisions of the Compact would be "...binding on the agencies, wards, and instrumentalities of the United States of America..." thus effectively legislating the Compact as an exception to these environmental acts. The Compact also predates the final settlement of Carson River waters by the Alpine Decree and may be inconsistent with it.

2. The Compact is a step backward because it would effectively preclude the type of negotiated settlement envisioned by S.1558, the Pyramid Lake Paiute and Truckee River Settlement Act proposed by Senator Laxalt in 1985. Continuation of the negotiation process is a superior method to resolving the complex interstate water issues than is offered by the 15 year old compact.

3. The compact not only fails to provide an adequate framework for the solution of complex state and federal water management problems relating to environmental, recreational and wildlife issues, but would make their solution far more difficult. Specifically, the Compact ignores the water quality and quantity needs of the Pyramid Lake fishery, the Stillwater NWMA, and Carson Lake. For example, at Carson Lake, severe water quality problems were recently discovered similar to those of other Pacific flyway wildlife areas such as Kesterson in California. Indeed, the Compact would subordinate federal water management to its terms and may well impair the ability of the federal government to meet its international treaty obligations regarding the Pacific flyway of which Stillwater is a part.

The Sierra Club has made extensive efforts to develop technical solutions to the myriad of problems created by the Newlands project. We firmly believe that this type of comprehensive approach is essential to solving the longstanding and complex interstate water problems. The proposed legislation not only fails to address the majority of interstate water problems, but may add a whole new set of constraints which will prevent a future more comprehensive settlement from being developed.

For more information, please contact David A. Hornbeck, Chair of the Sierra Club's Pyramid Lake Task Force, at 1675 Lakeside Dr., Reno, NV, 89509-3408; phone number 702-322-9077.

TESTIMONY
# of the
NAVAJO NATION

on S. 2457
THE CALIFORNIA-NEVADA INTERSTATE COMPACT

July 15, 1986

Mr. Chairman, members of the Committee; on behalf of Chairman Peterson Zah and the Navajo Tribal Council, we thank you for this opportunity to comment on S. 2457.

We oppose S. 2457 because we believe it would establish a very harmful precedent in the laws governing Indian water rights. We also believe that S. 2457 contains provisions which are contrary to the federal/tribal trust relationship.

The California-Nevada Compact has consistently been opposed since 1968 by the Pyramid Lake Paiutes and by the Interior and Justice Departments. The Compact was negotiated between the two States, without any involvement or participation of the Pyramid Lake Tribe or other affected tribes. While representatives of the United States attended the negotiating sessions, they did not negotiate on the Tribe's behalf. The Compact would significantly and adversely affect the Pyramid Lake Tribe's rights, claims and interests by giving away water that is desperately needed and currently is being used by Pyramid Lake's endangered cui-ui and threatened Lahontan cutthroat trout, by extinguishing the Tribe's claim to water rights that are currently pending before federal courts, and by modifying two final federal court decrees.

In addition to the direct and immediate harm that the Compact would inflict on the Pyramid Lake Paiutes and their once magnificent and world famous fishery, ratification of the Compact would set a precedent for all Indian tribes. Every other western water compact has expressly provided that it would not be deemed to adversely affect the rights claims and interests of Indian tribes. In stark contrast, Article XXII of the California-Nevada Interstate Compact states that it will become effective when, but only if, Congress makes its key provisions binding on the United States and Indian tribes. If the Compact is ratified, the effect would be to make the Pyramid Lake Paiute Tribe an involuntary party to an agreement extinguishing its water rights negotiated by its adversaries.

The Interstate Compact Clause of the Constitution never was intended to be used in this way. It is supposed to be a way for states to settle disputes between themselves, not to allow states to dictate to the federal government and Indian tribes. The Navajo Nation strongly believes that conflicts over Indian natural resources should be resolved either by the courts through litigation or by agreements voluntarily entered into by the concerned tribe, state and private parties.

Many Indian tribes are reluctant even to consider negotiations involving their fundamental and precious rights to natural resources, most especially water, owing to the unfortunate and tragic history of our "negotiations" with the United States and the failure of the United States to promptly honor even its recent commitments, such as the construction of the Navajo Indian Irrigation Project. We strongly believe that Congressional ratification of the California-Nevada Interstate Compact would send a clear signal to all Indian Tribes that Congress and the States cannot be trusted to deal fairly with Indian water rights.

We respectfully urge this Subcommittee to decline to take further action on S. 2457.

Thank you for this opportunity to offer our views.

STATEMENT OF

PETER G. MORROS
NEVADA STATE ENGINEER
AND
CHAIRMAN
CALIFORNIA-NEVADA INTERSTATE COMPACT COMMISSION
OF NEVADA

Mr. Chairman and members of the Committee, my name is Peter G. Morros and I appreciate the opportunity to testify before you in support of Senate Bill 2457, a bill of critical importance to the State of Nevada. This bill introduced by Senators Paul Laxalt and Chic Hecht seeks to grant consent of Congress to the California-Nevada Interstate Compact.

I appear before you in a dual role: First, that of Nevada State Engineer whose primary responsibility is the administration and enforcement of Nevada's Water Law as well as planning for existing and future water supplies to meet the needs of the citizens of our State. Secondly, the State Engineer is Chairman of the California-Nevada Interstate Compact Commission of Nevada, whose primary purpose was to negotiate an interstate compact with the State of California which would provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker River Basins. Prior to appointment as State Engineer of the State of Nevada in 1981, I served, beginning in 1962, in various capacities within the Division of Water Resources and for a brief time as Assistant Director of the Department of Conservation and Natural Resources.

As the most arid State in the Union, Nevada has very limited water supplies. It is imperative for effective administration, management and planning that specific and finite determinations of water availability be made in order to meet current as well as future needs.

In the absence of such determinations, not only is the responsibility for administration and planning frustrated, but the concerns and interest of water users and citizens of the State cannot be adequately addressed.

I will not belabor the merits of this compact as others who have testified, or may testify, I believe, will address the specific provisions. The Nevada Commission wishes, however, to emphasize to this Committee that this compact is the result of many years of negotiations which involved full consideration of all interests and was carefully designed not to effect any existing right or decree or impact any valid claim to the use of water that any person or entity may assert. The primary thrust of the compact is the recognition of each state's right to the use of a common and limited water supply, the resolution of conflicts and controversies and the jurisdictional authority of each state to determine under its own laws, the allocation of water. Although the States of Nevada and California have operated in cooperative agreement under the terms of the Interstate Compact, it is clear that if the agreement is not formally finalized, the potential for conflict between the states and water users in the respective states is eminent at some time in the future. For example, there remains a threat on the Walker River stream system, by the California Attorney General's office, to institute an interstate lawsuit immediately should Nevada interests begin to unilaterally develop upstream storage on the Walker River stream system.

This threat in the absence of an interstate allocation has frustrated plans to build upstream storage and has also impacted on intra-state determinations between upstream and downstream users on the Walker River stream system.

I have been instructed to submit a resolution, unanimously adopted by the Commission, reaffirming the position of the Nevada Commission on ratification of the Compact. I think it is important to note that the membership on the Nevada Commission was statutorily designed to be representative of the various interests and areas that are involved and effected by the Compact.

The importance of ratification of this compact as a critical element of water law administration is most significant in the Lake Tahoe Basin. In the absence of the compact, there is no allocation of water for the Tahoe Basin. The State Engineer has been concerned for a number of years over the legality of existing beneficial uses within the basin. Applications for additional uses within the Tahoe basin and the river basins are presently pending before the State Engineer. The Compact not only recognizes existing rights and beneficial uses but effectively divides those waters not needed to satisfy existing rights and uses proportionately between the states based on the needs of the two states. As I indicated, both the states of Nevada and California, in a good faith understanding, have administered their respective water laws for 16 years under the provisions of this Compact which, in itself, is a testament to the foundation of the Compact, but there has been the continuing uncertainty and periodically a legal challenge to the good faith application of the provisions of the Compact in the absence of ratification.

The result is, action on and administration of water rights in the Lake Tahoe Basin have been stymied and frustrated. For example, in the absence of a Compact it cannot be specifically determined with finality if approval of additional appropriations would adversely affect downstream water users on the one hand, and on the other hand, existing and potential water users in the Lake Tahoe Basin cannot be specifically informed and benefit from actions of the State Engineer to assure and affirm a water supply for their needs.

All of these factors also indicate the indeterminate and, in fact, impossible nature of future planning because, very simply, quantities of water available are not known with certainty. Ratification of this Compact will be a giant step in putting these concerns to rest.

Thank you, Mr. Chairman.

STATE OF NEVADA

CALIFORNIA-NEVADA INTERSTATE COMPACT COMMISSION

RESOLUTION

WHEREAS, On May 12, 1986, Nevada Senators Laxalt and Hecht introduced into the United States Senate, S.2457, a bill to grant consent of Congress to the California-Nevada Interstate Compact.

WHEREAS, On May 30, 1986, the California-Nevada Interstate Compact Commission of the State of Nevada met in a duly noticed public meeting.

WHEREAS, The purpose of the aforementioned meeting was, among other things, to discuss the Commission's position on the above proposed legislation; now, therefore, be it

RESOLVED BY THE California-Nevada Interstate Compact Commission of the State of Nevada, that its Chairman, State Engineer Peter G. Morros, be directed to prepare this instant resolution reaffirming the Commission's consistent, unqualified and unanimous position that Congressional ratification of the California-Nevada Interstate Compact is imperative and in the ultimate best public interest of the State of Nevada and all other parties thereto.

DATED this 9th day of June, 1986.

Peter G. Morros
PETER G. MORROS
Chairman

MUNGER, TOLLES & OLSON
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
612 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90017-2885
TELEPHONE (213) 683-9100

E. LEROY TOLLES *
RICHARD D. ESBENSHADE *
PETER R. TAFT *
C. DOUGLAS KRANWINKLE
ROBERT K. JOHNSON *
ALAN V. FRIEDMAN *
RONALD L. OLSON *
DENNIS E. KINNAIRD *
SIMON M. LORNE
DENNIS C. BROWN *
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
MELVYN M. WALD *
EDWIN V. WOODSOME, JR. *
ALLEN M. KATZ
DANIEL P. GARCIA
ALAN D. BERSIN
ROBERT L. ADLER
CARY B. LERMAN
WILLIAM L. CATHEY JR.
CHARLES D. SIEGAL
RONALD K. MEYER
GREGORY P. STONE
VILMA S. MARTINEZ
LUCY T. EISENBERG
BRAD D. BRIAN
BRADLEY S. PHILLIPS
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RITA J. MILLER
D. BARCLAY EDMUNDSON
WILLIAM D. TEMKO
STEVEN L. GUISE *
ROBERT B. KNAUSS
R. GREGORY MORGAN
STEPHEN M. KRISTOVICH
RICHARD B. KENDALL
TERRY E. SANCHEZ
STEVEN M. PERRY
RUTH E. FISHER
ANNE M. EGERTON
ELLEN P. APRILL
JOSEPH D. LEE
RICHARD W. BANE
MARK W. KROLOFF
MARK B. HELM
MICHAEL E. SOLOFF
ANNE T. LADIN
GREGORY D. PHILLIPS
JOHN B. FRANK
SALLY A. KINGSBERG
MICHAEL R. DOYEN
ROSA M. C. CUMARE
SUSAN E. NASH
GARY D. ROBERTS
EUGENE G. ILLOVSKY
FELICIA A. MARCUS

* A PROFESSIONAL CORPORATION

FREDERICK B. WARDER JR.
(1938-1972)
CABLE ADDRESS MUNTOLL
TELEX 677574
TELECOPIER (213) [illegible]

July 8, 1986

Honorable Strom Thurmond
Chairman
Senate Judiciary Committee
224 Senate Russell Office Building
Washington, D.C. 20510

Re: S.2457

Dear Senator Thurmond:

We are writing to express our opposition to the ratification of the California-Nevada Interstate Compact and to the enactment of S.2457.

As former officials of the Interior and Justice Departments concerned with the protection of natural resources belonging to both the federal government and the Nation's Indian tribes, we believe that the Interstate Compact Clause of the Constitution should not be used to make either the federal government or Indian tribes involuntary parties to agreements between states. The Compact Clause was intended to be a vehicle for the resolution of disputes between states, not to enable the states to dictate to the federal government with respect to federal and Indian rights and interests. Congress would abdicate its responsibilities by adopting agreements affecting vital federal and Indian interests which were reached without direct federal and Indian participation as negotiating parties.

Legislation to ratify an interstate compact is unique because even the slightest modification means that the compact would have to be resubmitted to the respective state legislatures for reratification. This makes the interstate compact process inherently unsuitable for the resolution of complex disputes involving significant federal and Indian, as well as state, resources, especially where the federal government and affected Indian tribes do not participate as full and equal parties in the negotiations.

Congress will set an extremely bad and dangerous precedent if it ratifies the California-Nevada Interstate Compact and agrees to make its provisions binding on the United States and the affected Indian tribes. Other states undoubtedly would follow the example set by Nevada and California by attempting to reach agreements affecting federal and Indian resources and then seek to have those agreements made binding on the United States through Congressional ratification. Once the adverse precedent has been established, it would become more difficult for Congress and the Executive to disapprove other similar compacts negotiated by two or more states.

Ratification of the California-Nevada Interstate Compact also would be a great disservice and manifest injustice to the Pyramid Lake Paiute Tribe of Indians. Unfortunately, the federal government has placed itself in the awkward position of representing federal interests in conflict with its fiduciary obligations to the Pyramid Lake Paiute Indian Tribe. No Indian tribe has been more victimized by such a conflict than the Pyramid Lake Paiutes. The direct conflict between the Tribe's reserved water rights and the water rights for the Newlands Reclamation Project resulted in the loss of the Tribe's most precious and valuable rights because of the government's failure even to assert them in the suit to adjudicate all water rights on the Truckee River. Congressional ratification of the Compact would compound the grave injustice the Pyramid lake Paiutes have already suffered.

For these reasons, we strongly oppose ratification of the California-Nevada Interstate Compact and urge rejection of S.2457.

Sincerely,

Peter R. Taft
MUNGER, TOLLES & OLSON
612 South Flower Street
Suite 500
Los Angeles, California 90017
Assistant Attorney General for the
Lands and Natural Resources Division
1975 to 1977

James W. Moorman
Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Assistant Attorney General for the
Lands and Natural Resources Division
1977 to 1981

Erwin N. Griswold
Jones, Day, Reavis & Pogue
655 15th Street, N.W.
Metropolitan Square
Suite 600
Washington, D.C. 20005
Solicitor General of the
Department of Justice
1967 to 1973

Cecil D. Andrus
537 Bannock Street
Suite 201
Boise, Idaho 83701
Secretary of the Interior
1977 to 1981

Stewart Udall
70 East Mitchell Drive
Phoenix, Arizona 85012
Secretary of the Interior
1961 to 1969

Frank J. Barry
5335 North Calle La Cima
Tucson, Arizona 85718
Solicitor of the Department
of the Interior
1961 to 1968

Kent Frizzell
Professor of Law
University of Tulsa
College of Law
Tulsa, Oklahoma
Assistant Attorney General
for the Lands and Natural Resources Division
1972 to 1973
Solicitor of the Department of the Interior
1973 to 1975
Under Secretary of the Interior
1975 to 1976

TESTIMONY OF

LESLIE B. GRAY
COUNSEL
FOR
WASHOE COUNTY WATER CONSERVATION DISTRICT

MR. CHAIRMAN AND MEMBERS OF THE SUB-COMMITTEE:

My name is Leslie B. Gray, representing the WASHOE COUNTY WATER CONSERVATION DISTRICT, Reno, Nevada. I make this abbreviated statement in writing in the interest of saving time.

The Conservation District is a quasi-public corporation organized pursuant to Nevada Irrigation statutes primarily to operate Boca Dam and distribute water for irrigation purposes. It started in the late 1920's and since the Truckee River Agreement of 1935 and the ORR DITCH Decree of 1944 has been vitally involved in the operation of the system and the negotiations and litigation that have proliferated to the present day.

Our principal contract is with the Bureau of Reclamation for the operation of Boca Dam which has been paid off to the Federal Government through our assessments. Our assessments have increased to enable the Water Master to conduct enhanced water management requirements.

Pursuant to similar contracts we operate Stampede, Prosser and Martis dams. All of our operations are under the supervision and control of the Water Master who is an officer of the United States District Court of Nevada.

We are frequently confused with the CARSON-TRUCKEE CONSERVANCY WATER DISTRICT which I note solely for clarity.

The lengthy history of the California-Nevada Interstate Compact will be related by others but I think when this vast struggle over the Truckee, Carson and Walker systems is viewed in retrospect you cannot fail to conclude that the time is NOW to approve the agreement.

It is sad to see how we have come to this after all the wasted years, the committees, the commissions, the task-forces and the settlement negotiations (particularly the most recent negotiation which gave the Tribe northern Nevada with a fence around it), all for naught because of intransigence on the part of all parties and most recently the Tribe.

The Compact has been held hostage for the better part of 20 years without relevance or justification to force a settlement in favor of Pyrasaid Lake. That settlement was achieved in S.1558 and is stalled by a rump movement which violates all legal and ethical principles. It should be passed with certain amendments like with reference to the ridiculous controversy over who owns the lake and stream bed.

Recognizing that the Tribe has been abused and that we are now being abused, acknowledging that the passage of S.1558 is not feasible and that we are back to square minus 3, I have been instructed to state in the strongest terms possible that the District and the owners of the 21,476 parcels assessed, urges that favorable consideration be given to the consent of the Congress to the Compact.

The consent of the Congress and the United States is justified for the following reasons:

1. The Compact allocates only the total amount of water to each state. It does not purport to allocate water within the states.

The United States is not bound to any particular use within either of the two states nor to any particular development of any future project within the states, but would be only bound with respect to the allocations of water between the two respective states.

The United States owns or controls almost all the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. Its failure to agree to the allocations provided in the Compact would nullify the force and effect of the substantial provisions of the Compact. (These two paragraphs come from the testimony of Roland D. Westergard re S.1558.)

2. The Compact has been operating smoothly and for the benefit of all concerned ever since it was approved by the states. It does not affect Tribal rights and as a matter of fact cannot do anything but benefit the Tribe.

3. It can be said without fear of contradiction that all the people of northern Nevada and the comparable area of California, except for a few Tribal members and representatives, are in favor of Congressional ratification of the Compact.

4. We go further. It is our conviction that footnote 7 of NEVADA v. UNITED STATES, (see Exhibit A attached) has been fully realized. The

cutthroat trout and the cui-ui are abundant and clearly no longer endangered or threatened. (See Reno-Gazette-Journal stories, November XX 5, 1984 and June 9, 1986, Exhibits B and C attached.)

Pyramid is higher than it has been in recent history. The last elevation we have, 6/29/86, is 3817.06. At the time of the Task Force report in the latter part of 1971, it was 3794. We appreciate that conditions change but the point is that Pyramid is in good shape.

5. The final reason that clinches the cause for Congressional consent is that "neither state can plan, develop or assume its individual obligation for what appears to be its future destiny" without it. (Westergard, supra),

The Tribal representatives and probably the Fish and Wildlife people will claim that the fish are still endangered or threatened, that California gets more water than it is entitled to by the Compact (which is demonstrably false), that Stampede water belongs to them (also untrue), that the Tribe should have all the unappropriated water in California and Nevada (no way) and that the Compact "is a significant backward step" (despite the fact that it has been in operation all these years). (See Reno Gazette-Journal, 5/28/86) Exhibit D attached.)

The sufficient answer to the Tribe today is that they did it to themselves and the Compact is no part of their problem.

Respectfully submitted,

Leslie B. Gray

LESLIE B. GRAY
Counsel for WASHOE COUNTY
WATER CONSERVATION DISTRICT

sies. Efforts to restore the fishery have occurred since that time. Pyramid Lake has been stabilized for several years and, augmented by passage of the Washoe Project Act of 1956, ch. 809, §4, 70 Stat. 777, the Lake is being restocked with cutthroat trout and cui-ui. Fish hatcheries operated by both the State of Nevada and the United States have been one source for replenishing the Lake. In 1976 the Marble Bluff Dam and Fishway was completed, enabling the fish to bypass the delta to their spawning grounds in the Truckee. Both the District Court and Court of Appeals observed that "these restoration efforts 'appear to justify optimism for eventual success.'" 649 F. 2d 1286, 1294 (CA9 1981). See App. to Nevada Petn. for Cert. a184.

ExHIBIT A

Pyramid Lake offering more public services

It's your turn

ALAN W. RUGER

A recent letter expressed concern over an increase in recreational-use fees at Pyramid Lake. It is true that fees have been raised but I would like to correct the misstatements of fact elsewhere in the letter.

The services to the public at Pyramid Lake have steadily improved over the past few years and include a public boat dock at Pelican Point; restroom facilities may be found at several locations around the lake; and a boat rental service is in operation at Windless Bay north of Sutcliffe.

Fishing pressure and use of the lake have expanded in recent years to match the quality of the outdoor experience which may be found. The fishing success rate surpasses that of the mid-1970s when cutthroat/rainbow hybrids were being stocked. The most recent creel census conducted in cooperation with the U.S. Fish and Wildlife service showed the average "keeper" to be 5 pounds!

National magazines are highlighting Pyramid Lake for its aesthetic and fishing bounty (Outdoor Life, December 1982; Sunset, October 1984). The Northern California Council of the Federation of Fly Fishers, with international membership of 40,000, states that Pyramid Lake is one of the best trophy trout fisheries in the world and if it continues to improve it will be the best in a short time.

The Pyramid Lake Tribe operates very sophisticated hatcheries which re-use more than 95 percent of the water. The facilities are open to the public from 9-11 a.m. and 1-3 p.m. daily. A slide presentation is also available for group presentations.

Pyramid Lake is a unique resource that appeals to many who appreciate its quiet solitude, changing colors, magnificent sunsets and vast remoteness. It may not, however, appeal to those who value flush toilets more than sunsets or marinas more than solitude.

We are proud of the progress we've made and this feeling is shared by the fishermen that we have talked with. We will endeavor to improve the Pyramid Lake resource and all we ask of you, the visiting public, is to enjoy your visit. For more information please call 359-2234.

Alan W. Ruger is director of the Pyramid Lake Fisheries.

J/G 11/5/84
EXHIBIT B

1a

Today's tip

The Reno City Council tackles proposed zoning and planning code changes during today's meeting at City Hall, 490 S. Center St. This portion of the meeting should begin about 4.

Monday
JUNE 9, 1986
RENO GAZETTE-JOURNAL

Section C
2C OBITUARIES
3-13C CLASSIFIED

Abundant water suits everyone — almost

Only waterfowl administrators are complaining

By Sheila Muhtadi/Gazette-Journal

Nothing eases tension among farmers, city folk and wildlife buffs like an abundant water supply.

Federal Water Master Garry Stone, for one, says his job has been made easier this year as area reservoirs and lakes fill to near capacity.

"I definitely think that all tensions are eased during an abundant water year," Stone said.

Not everything is perfect. Lake Tahoe is a little fuller than he would like it to be. It reached an elevation last week of 6228.9 feet, less than a foot from its federally mandated maximum.

Stone said the high water level has been more the result of recent thunderstorms than snowmelt runoff due to high temperatures. As a result, he has increased the diversion into the Truckee River from 400 cubic feet per second to 1,650 cfs.

"I anticipate that all the reservoirs with the exception of Stampede Reservoir will fill this year," Stone said. Those he mentioned as filling are Boca Reservoir, Prosser Creek Reservoir, Donner Lake, Independence Lake and Lahontan Reservoir.

He predicted the Truckee River will flow at 140 percent of normal this summer.

Stampede will nearly fill, he said, but water must be released to help fill Pyramid Lake and leave flood space available.

Stone also noted that Pyramid Lake has risen 6.16 feet since last year as the result of heavy runoff and the February flood.

Conditions at Pyramid have sparked the largest spawning of cui-ui fish since 1969, according to Chester Buchanan, fishery biologist at the U.S. Fish and

See HIGH, page 2C

Mark Crosse/Gazette-Journal

HIGH WATER: The unusually large volume of water in the Truckee River makes for a good spring for farmers, water managers, fish — and the fishermen who try to catch them. These two are angling from rocks between Wingfield Park and Sierra Street.

EXHIBIT C

2C—Reno Gazette-Journal Monday, June 9, 1986

High water

From page 1C

Wildlife Service. Buchanan said more than 36,000 adult cui-ui swam upstream to spawn recently. That compares to 9,500 last year.

"It was the high lake level which provided easy passage," he said. The lake's delta often stops the endangered fish from passing upstream and a fishway allows only so many fish through, Buchanan said.

"We're trying to maintain some kind of constant flow in the river to maintain the quality of the habitat," Buchanan said. Most cui-ui spawn in about 2 feet of water and a swift, high flow would kick the eggs from the gravel. A drop in water could allow the eggs to dry, killing them, he added.

Maintaining a constant flow requires communication and cooperation between the Fish and Wildlife Service and the water master who controls the flow.

"Garry has been very cooperative and worked very closely with us," Buchanan said. "There's a lot of water this year and it makes tension between agencies a lot less."

Buchanan said the majority of the eggs have hatched and the larvae are out of the gravel and migrating back to Pyramid Lake. The increased flow in the Truckee due to the Lake Tahoe diversion shouldn't affect cui-ui production.

February's flood of fresh water also may have acted as a stimulus that helped move cui-cui upstream, Buchanan speculated.

"It is going to produce a strong year-class that will be around for at least three decades."

The water situation also looks promising for Carson River irrigators, according to Stone. Noting that there is only minor water storage for the upper Carson River, he said a dense, high snowpack will yield a long runoff period for this summer.

"The only reservoir they (upper Carson River irrigators) have over there is the snowpack," Stone said.

Doris Morin, secretary-treasurer of the Truckee Carson Irrigation District, said recent high temperatures have caused high flows in the Carson River which could lead to some flooding.

"The (Lahontan) Reservoir is pretty much at capacity now," Morin said. With a capacity of 317,400 acre-feet, it is now holding 303,184 acre-feet.

Morin explained that the irrigation district tries to keep the water flow from Lahontan Reservoir into the Carson River at less than 2,000 cfs.

"We can handle (releasing into the river) 2,000 cfs without causing damage to adjacent property owners (along the Carson River below Lahontan Reservoir)," Morin said. However, she said, the overflow reached 2,825 cfs Monday because of the high river flow.

"We are discharging at maximum capability," she said, noting that irrigators can remove 1,790 cfs.

Morin said despite flood potential, the high flows mean good carry-over storage for next year. She said although Carson River irrigators have had 100 percent allocation in recent years, they did experience water shortages in the mid-1970s.

John Capurro of the U.S. Soil Conservation Service said controlling flow rates on reservoirs has been made more difficult because evening thunderstorms can cause sudden rises.

While water users would prefer a slow runoff from the snowpack, the high temperatures which are speeding up the runoff are not a concern.

"They've got enough water stored that if it came off fast," they would still have an adequate supply, Capurro said.

Water isn't a blessing for all of Nevada, however. Terry Retterer, waterfowl specialist with the Nevada Department of Wildlife, said high water has ruined a lot of waterfowl habitat.

"High water can do extensive damage," Retterer said. The Stillwater Wildlife Refuge has flooded for three years in a row, he added.

"The Stillwater developed marsh (an area containing dikes, water control structures, roads and channels) is all flooded and in need of extensive repair," Retterer said. "We're probably looking at a five-year project costing in excess of $5 million."

For now, Retterer said, the Department of Wildlife plans to spend $170,000 to rebuild one-fourth of the developed area which is no longer under water. The money, he said, is coming from Ducks Unlimited donations, duck stamp money and department funds.

Also flooded were the marshes of Ruby and Franklin lakes near Elko, Humboldt River wetlands and the Carson Lake-Greenhead Hunting Club near Fallon.

The U.S. Fish and Wildlife Service reported in 1985 the smallest duck population for 30 years. Retterer said the 1986 figures aren't in but he expects numbers for eastern Nevada to be about the same as last year and western Nevada to be worse.

"We know it's not going to be very good at all."

Goose production is also on a downward swing, falling from 1,216 in 1984 to 791 in 1985, Retterer said.

Despite the abundance of water, area planning officials continue to work on projects to bring more water into the Truckee Meadows.

Tom Stevens of the Public Service Commission said the abundant water supply this year doesn't affect the commission's pursuit of new water resources and storage facilities.

Stevens said it is important to pursue new water possibilities even during a wet year because "you don't develop water resources overnight."

Sierra Pacific Power Co., which supplies most of the Truckee Meadows with water, will also continue long-range planning, according to spokeswoman Faye Anderson.

Paiutes look to Sparks for help in water fight

By Lisa Owens/Gazette-Journal

If the cities of Sparks and Reno oppose a proposed interstate water compact between Nevada and California, the Paiute Indian tribe could use its clout to create a better water deal for the Truckee Meadows, the tribe's chief told the Sparks City Council Tuesday night.

In addition to increased water for Reno nd Sparks, endangered cui-ui and threa-ened Lahontan cutthroat trout would be aved if the communities oppose the congressional legislation introduced by Sen Paul Laxalt, R-Nevada, Joe Ely said.

"We have bargaining chips here," Ely said, referring to water rights claims that could be used to strike a deal with California to obtain more water for the area.

According to Ely, the compact would give California more water, while depriving Nevada of the much-needed resource. We should stand together on this," Ely said during an informational presentation that called for no action by the council.

See SPARKS, page 2C

EXHIBIT D
5/28/86

parks council

page 1C

y maintains that if California gets all water it wants, there would be no ntive for California to work with ada in dealing with its water shortage lems.

nstead of solving existing problems, uld create new ones," Ely said of the osal that should be voted on before ber.

Ve think the compact is a significant ward step."

e complex compact proposal, agreed y the two states in the 1980s but never ied by Congress, includes two provis that especially worry the Paiute s.

] At Stampede Reservoir, 6,000 acre-of water of the lake's 200,000 acre-feet acity would be diverted to California. ently, the reservoir's water is rved to keep the Truckee River flows enough to breed the cutthroat and ui at Pyramid Lake, which means the tes use as much of the reservoir's er as is needed. "If we lose (the er), it would be an extreme detriment to the fishery," Ely said. Losing that much water also would be "a major concern for Sparks' municipal and industrial needs."

☐ In the Tahoe Basin, 23,000 acre-feet of water would be allocated to California, while Nevada would receive 11,000 acre-feet. The Paiutes currently have a claim to 6,500 acre-feet of unappropriated water in California.

"Under the compact, those claims would be given to California and California would have no incentive to institute provisions" to aid Nevada, Ely said.

While the council took no action on the matter, Spoo said before the meeting it may not be in the city's best interest to oppose the compact proposal.

"Even though (there may be) disadvantages to the compact, we think the advantages of securing water rights for (Sparks) could be more advantageous," Spoo said. "We stand to lose far more than we could gain" by opposing the plan.

Spoo also said that it might be possible for the city to approve the compact and later make amendments to it as needed in order to help the Paiutes fulfill some of their needs.

BIA COMMENTS
California-Nevada Compact
November 1984

1. We concur with the statement made by Secretary of Interior Stewart L. Udall in a January 14, 1969 letter to Charles J. Zwick, Director, Bureau of the Budget: "The compact goes beyond the usual function of allocating water between party states and purports to bind the federal government both as a sovereign and as trustee for Indians." And yet there was only token United States representation in the compact negotiation process (a neutral U.S. representative) and no Indian involvement. At the end of the compact negotiations a provision was added to the compact to bind the United States. Our position, because of the Indian people we represent, is that substantial changes in the compact must be made before it is accepted.

2. ART.II.E. The Carson sink area should be included within the definition of the Carson River basin. If the sink is not defined as part of the basin then the downstream limit of the Carson River basin should be precisely defined.

3. ART.II.F. The Walker River basin should include the whole Walker Lake and not just the portion on the Walker River Indian Reservation.

4. ART.II. Definition should be provided for "beneficial use".

5. ART.IV. The prohibition on domicle and residence for the federal representation appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian

representation assured. Additionaly, by reason of the substantial federal interest in the region and the fact that the United States would be bound by key provisions of the compact, the federal representative should be a voting member of the Commission.

6. ART. IV.D.6. We do not believe that the Compact Commission should have unilateral power to dictate measuring devices over all lands within the appropriate water basins. Acceptable language would be the inclusion of a sentence following the phrase..."as the Commission may determine necessary or proper to carry out the purposes and provisions of the compact. Such determination may be made only after appropriate hearings or consultation with the water users and with respect to waters on Federal lands, shall take into consideration the program and plans of the Agency administering such lands.

7. ART.IV.D.11. As written, the Compact Commission has broader subpoena power than U.S. District Court judges. We find that objectionable.

8. ART.IV.E. As written, the Compact Commission could conceivably reallocate water irregardless of judicial decree. This is unacceptable.

9. ART.V. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The

storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

10. ART.V.E. The pumping from Lake Tahoe provision works against Pyramid Lake and judicious use of Stampede reservoir.

11. ART.V.F. This section gives the Compact Commission extremely broad powers that seem to supersede the "Orr Ditch" and "1915" decrees.

12. ART.VI. The Pyramid Lake Paiute Tribe is precluded by *Nevada* v. *United States* from asserting claims against appropriated water right holders. The tribe needs the unappropriated Truckee River water in California and Nevada. Presently the compact does not allow the tribe to do this.

13. ART.VI. At best the compact does not address the issue of reservoir operation.

14. ART.VI.1.3 & 4. Water is allocated for undefined purposes in California. Judge Ramirez has ruled from the bench in *Pyramid Lake Paiute Tribe* v. *State of California* that Tribe's claim to unappropriated water is unaffected by *Nevada* v. *United States*.

15. ART.VI.B.3. Six thousand acre feet of water are granted to California from Stampede reservoir. The allocation ignores the Ninth Circuit Court Decision in *Carson - Truckee Water Conservancy District* v. *Secretary of Interior* and the Endangered Species Act, 16 U.S.C. §1531.

16. ART.VI.B.4. Neither fishery flows nor lake stabilization are listed as beneficial uses of water.

17 ART.VI. Floriston rates are not mentioned in the compact and yet that is the logical place to address and correct their inconsistences and inefficiencies. Presently California is not bound by them and they are

outdated. Floriston rate regime has a bearing on Pyramid Lake stabilization and spring spawning flows.

18. ART.VII. This article does not entirely agree with the final Alpine decree in regard to acreage, water rotation and irrigation season. Appropriate language perhaps could be inserted as follows: "The Compact Commission shall recognize the pertinent provisions of the final Alpine decree as they pertain to allocations of water between California and Nevada."

19. ART.VIII. Water quality problems are not addressed and are of vital interests to the Walker River Tribe.

20. ART.VIII. The term "unused water" is used throughout the article. The term should be "unappropriated water".

21. ART.VIII.A.4(a). Weber Reservoir on the Walker River Indian Reservation was constructed fifty years ago. A right to store water in the structure has not been acceded to by the Nevada State Engineer. As now written this article would allow Hoye Canyon and Pickle Meadows reservoirs, proposed structures that have a Nevada water right priority in the 1930's to be constructed in the future and operated to the detriment of the Walker River Tribe.

22. ART.X. Interbasin transfers of water should further be limited by language of existing court decrees.

23. ART.XII. The Federal government owns and controls most of the storage and diversion facilities in the compact area. The Compact Commission should not control the operation of Federal reservoirs.

24. ART.XXI. This article purports to protect the right of the United States. Paragraph A through D, Article XXI, if taken alone, probably would give

total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, Article XXII, Ratification and Consent, an exception for which is contained in Article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-reference to other sections in the compact, the United States would be bound to still other provisions. Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality.

25. ART.XXI. Somewhere in the compact should be these additional paragraphs:
... except as provided in Article XXII nothing in this compact shall be construed as:
*Impairing or affecting the constitutional authority of the United States or any of its powers, rights, functions, or jurisdiction under existing or future legislation in and over the area of waters which are the subject of this compact.
*Affecting the rights or powers of the United States of America, its Agencies, instrumentalities, or wards to administer and control lands of the United States or lands administered by it, or giving to the Commissioner to any person, organization, or governmental entity and rights or powers to use, occupy, administer, alter or control lands owned or administered by the United States, except with the consent of the Agency or instrumentalilty administering or having control of said land.

*Relinguishing the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, or shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations.

*A waiver by the United States of its immunity from suit.

26. Somewhere in the compact should be an article that says in substance: "The United States is entitled to develop additional water yields independently or in cooperation with others. Any such water yields that result from participation by the United States may be used for its own purpose or in futherance of the purpose of this compact without regard to any State allocations made by this compact."

27. Somewhere in the compact thorough consideration should be given to the quality of water allocated by the compact. The Walker River Indian Reservation presently suffers from high concentration of total dissolved solids in late summer; Lake Tahoe communities now export sewage into the Upper Carson River drainage; and Reno-Sparks sewage treatment problem are accelerating Pyramid Lake algal blooms.

28. With the threatened Lahontan cutthroat trout and the endangered Cui-ui found in the affected watersheds the compact cannot ignore the Endangered Species Act.

STATE OF NEVADA
**Commission
on
Economic Development**

RICHARD H. BRYAN
Governor

LT. GOV. ROBERT A. CASHELL
Chairman, Commission on Economic Development

Commissioners

MAJ. GEN. R. G. TAYLOR
Vice Chairman, Commission on Economic Development
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CESAR J. MARTINEZ
Chartered Life Underwriter
Massachusetts Mutual Life Insurance
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LARRY J. DUNTON
Eastern Nevada Medical Group
Ely, Nevada 89301

Staff

ANDREW P. GROSE
Executive Director

ROBERT M. HIRSCH
Director, Motion Picture Division

CALIFORNIA/NEVADA INTERSTATE WATER COMPACT

WHEREAS, water is an essential element in economic development, and

WHEREAS, this is a particularly crucial element in arid and desert areas, and

WHEREAS, the welfare and livelihood of most of Western Nevada is dependent upon water sources that rise in California and flow into Nevada, and

WHEREAS, the long term beneficial use of water and planning for water for Western Nevada is dependent upon a cooperative agreement between California and Nevada, and

WHEREAS, the two states entered into a compact in 1971, but that compact has never been ratified by Congress, and

WHEREAS, S2457 has now been introduced by Senators' Laxalt and Hecht to ratify the compact, and

WHEREAS, ratification of the compact is critical to secure the economic future of Western Nevada,

NOW, THEREFORE, BE IT RESOLVED by the Nevada Commission on Economic Development that S2457 should be enacted by Congress so that the California-Nevada Interstate Compact be ratified.

Lt. Gov. Robert A. Cashell, Chairman
Commission on Economic Development

RAC/pr

Main Office · Capitol Complex · Carson City, Nevada 89710 · (702) 885-4325
Motion Picture Television Productions · 2501 E. Sahara Avenue · Suite 101 · Las Vegas, Nevada 89158 · (702) 386-5287

RESOLUTION

WHEREAS, The California-Nevada Interstate Commission was created in 1956 to divide the waters of Lake Tahoe, the Truckee River, the Carson River, the Walker River and their tributaries; and

WHEREAS, The purpose of the Joint State Compact was to provide for the equitable apportionment of water between the two states; to promote interstate comity; to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use conservation and control of the waters within the Lake Tahoe, Truckee River, Carson River and Walker River Basins; and

WHEREAS, The negotiations were concluded and agreed upon by the California-Nevada Interstate Compact Commission and a representative of the United States Government in 1969; and

WHEREAS, The States of California and Nevada through their respective Legislatures approved the Interstate Compact in 1971; and

WHEREAS, On May 12, 1986, Nevada's Senators Laxalt and Hecht introduced into the United States Senate, S2457, a bill to grant the consent of Congress to the California-Nevada Interstate Compact; and

WHEREAS, It is of utmost importance to the sovereign State of Nevada, and of utmost importance to the people of Nevada, and of utmost importance to each community within the areas involved; now, therefore, be it

RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF WESTERN NEVADA, A public-private organization, chartered to assist in diversifying and developing the economy of western Nevada, urges the United States Congress to formally ratify S2457 thereby adopting the California-Nevada Interstate Compact.

James A. Thornton, President

Subscribed and Sworn

to before me this 8th day

of July, 1986

Rose M. Munson

Notary Public

ROSE M. MUNSON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES AUG. 20 [illegible]

RESOLUTION

WHEREAS, the States of California and Nevada in formal negotiations, chaired by a Federal Representative appointed by the President of the United States, have agreed to the provisions of the California-Nevada Interstate Compact, and

WHEREAS, the purpose of said Compact is to provide for the equitable apportionment of water between the two States, to promote interstate comity, and to further intergovernmental cooperation, to remove causes of present and future controversies, and to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins, and

WHEREAS, the States of California and Nevada, in their respective legislatures have approved the California-Nevada Interstate Compact, and

WHEREAS, there lies within Lyon County Nevada a portion of the Walker River Basin, the Carson River Basin, and a portion of the Newlands Reclamation project using water of the Truckee River Basin, and

WHEREAS, the existing economy and tax base of Lyon County, which is situated in an otherwise arid environment, absolutely depends upon the waters of the Walker River, Carson River, and Truckee River, and

WHEREAS, the provisions of the California-Nevada Interstate Compact fulfills the requirements of the authorization acts of the State of California, the State of Nevada, and the United States; namely:

1) They provide an equitable apportionment of water between the two States;

2) They promote interstate comity and intergovernmen-

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: July 10, 1986
W.J. PARR, Clerk of the Third, Judicial District Court of the State of Nevada, in and for Lyon County.
By Kelli Peterson
Deputy

tal cooperation;

3) They protect and enhance existing economies;

4) They remove the causes of controversies existant at the time of negotiations, and provide for a qualified permanent authority to resolve future controversies, and;

5) They permit the orderly integrated and comprehensive development, use, conservation, and control of water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

NOW THEREFORE, BE IT RESOLVED, that Lyon County, Nevada, through its elected County Commission, does hereby join with the Walker River Irrigation District, the Carson Truckee Conservancy District, and the Truckee Carson Irrigation District, each of which entities have interest in the water matters within Lyon County, in support of the California-Nevada Interstate Compact.

BE IT FURTHER RESOLVED, that Lyon County, Nevada, through its elected County Commission, hereby requests the timely ratification of the California-Nevada Interstate Compact by the Congress of the United States of America

AYES:

NAYES:

ABSENT:

ABSTENTIONS:

BOARD OF LYON COUNTY COMMISSIONERS

Member

Chairman

Member

Joseph J. Lommori
Member

Member

W J Parr
ATTEST

RESOLUTION NO. PL 63-86

RESOLUTION OF PYRAMID LAKE PAIUTE TRIBAL COUNCIL
OF THE PYRAMID LAKE INDIAN RESERVATION, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe of Indians has consistently opposed the California-Nevada Interstate Compact since the initial draft was presented in 1965, and

WHEREAS, the California-Nevada Interstate Compact seeks to make the Pyramid Lake and Walker River Tribes involuntary parties to agreements reached by the Tribe's adversaries and competitors, and

WHEREAS, the Pyramid Lake Paiute Tribe was not a party to the negotiation which led to the California-Nevada Interstate Compact and neither were the Tribe's interests represented by the United States; and

WHEREAS, all other interstate water compacts on western streams have specifically provided that they would not be binding on and would not adversely affect the rights and interests of Indian Tribes whereas, by contrast the California-Nevada Interstate Compact specifically states that it will affect the rights and interests of the Pyramid Lake and Walker River Tribes; and

WHEREAS, the California-Nevada Interstate compact sacrifices and it subordinates the existing beneficial uses, rights, claims and interests of the Pyramid Lake Paiute Tribe to the waters of the Truckee River and gives some of the water that now flows into Pyramid Lake to the States of California and Nevada for highly speculative new uses; and

WHEREAS, the provisions and allocations of the California-Nevada Compact are directly contrary to the letter and spirit of the firm federal policies embodied in the Endangered Species Act, the National Environmental Policy Act and other environmental laws enacted during the past fifteen years; and

WHEREAS, Congressional ratification of the Compact would set a very bad and dangerous precedent by allowing two states, through their joint decision to handcuff and prevent the federal government from protecting federal and Indian rights to water and other vital natural resources; and

WHEREAS, the Interstate Compact clause of the Constitution was not intended to be, and should not be, used as a vehicle by which states can dictate decisions to the federal government and Indian tribes regarding matter of federal and Indian interests and responsibilities; and

WHEREAS, at a minimum ratification of the Compact would override several existing final court decisions, which took as long as 60 years to litigate, and would create a welter of confusion, controversy, new litigation and program disruption; and

WHEREAS, Congressional ratification of the compact would compound the federal government's previous dereliction of duty to the Pyramid Lake Paiute Tribe by extinguishing some of the Tribe's remaining rights to the scarce waters of the Truckee River; and

WHEREAS, imposition of the Compact on the Pyramid Lake Paiute Tribe would constitute grave injustice and would be contrary to the federal government's fiduciary obligations to the Tribe as well as to the self-determination and government-to-government Indian policies that have been adopted by the Congress and every Administration for the past 20 years; and

WHEREAS, the defects, flaws and fundamental unfairness of the California-Nevada Interstate Compact have been recognized by every Administration, Republican and Democratic, for the past 20 years.

NOW, THEREFORE BE IT RESOLVED, by the Pyramid Lake Paiute Tribal Council that the Pyramid Lake Paiute Tribe adamently opposes congressional ratification of the California-Nevada Interstate Compact and directs the Tribal Chairman, the Tribal Attorney and all other Tribal officials to do everything possible to prevent congressional ratification of the compact and to insure that the Compact does not adversely affect the Pyramid Lake Paiute Tribe's existing uses, rights, claims or interests to the waters of the Truckee River; and

BE IT FURTHER RESOLVED, that the Pyramid Lake Paiute Tribe respectfully urges the United States Congress not to ratify the California-Nevada Interstate Compact and respectfully urges the officials of the United States Interior and Justice Departments to oppose the Compact and to do everything within their power to prevent its ratification.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of 10 members of whom 9 constituting a quorum were present at a meeting duly held on July 11, 1986, was adopted by the affirmative vote of 9 for and 0 against and 0 abstentions, pursuant to authority contained in the Constitution and By-Laws of the Pyramid Lake Paiute Tribe.

Della John

Della John, Secretary
PYRAMID LAKE PAIUTE TRIBAL COUNCIL

RESOLUTION NUMBER 86-32 .

RESOLUTION IN SUPPORT OF THE CONGRESSIONAL RATIFICATION OF THE CALIFORNIA-NEVADA BI-STATE WATER COMPACT

WHEREAS, a bi-state state compact establishing the distribution of waters crossing the California-Nevada border was ratified by the Nevada Legislature in 1969 and 1971 and by the California Legislature in 1970, and

WHEREAS, said compact distributes eighty (80) percent of the Carson River's waters to Nevada, wherein the waters are allocated according to the Alpine Decree, and

WHEREAS, said compact distributes 34,000 acre feet of water to Tahoe Basin users, of which 11,000 acre feet are permitted to Nevada properties, and

WHEREAS, said compact establishes authority to divert water within the Tahoe Basin and establishes a maximum limit on such diversions,

NOW, THEREFORE BE IT RESOLVED, that the Douglas County Board of Commissioners supports and encourages the Congressional ratification of the California-Nevada Bi-state Water Compact.

ADOPTED this 12th day of June, 1986, by the following vote:

AYES: Commissioners:

Herbert P. Witt

Barbara J. Cook

R.C. Oswald

Robert L. Pruett

ROBERT L. PRUETT, Chairman
Douglas County Board of Commissioners

ATTEST:

Yvonne Bernard

YVONNE BERNARD, Clerk